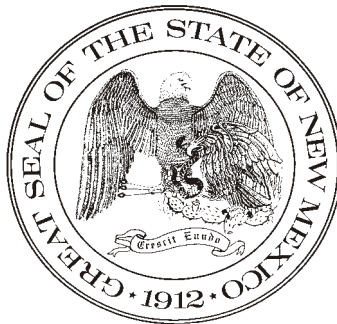


ELECTION REFORM TASK FORCE

2005 INTERIM
FINAL REPORT

to the
FORTY-SEVENTH LEGISLATURE
SECOND SESSION



New Mexico Legislative Council Service
Santa Fe, New Mexico
March 2006

ELECTION REFORM TASK FORCE 2005 INTERIM SUMMARY

The 34-member election reform task force was created by the legislative council for the 2005 interim, and included members of the public, county clerks, legislators and the secretary of state. During the 2005 legislative session, the legislature addressed a number of election issues and made numerous changes to the Election Code (Laws 2005, Chapter 270). Due to the complexity and extent of these changes, the election reform task force was created to review the provisions and implementation of the new law, review the Election Code to ensure that any obsolete language that conflicts with federal law was adequately addressed and, if necessary, recommend legislation for the 2006 legislative session to address any implementation problems or other unintended consequences of the new law.

The task force had to postpone its October 10-11 meeting until October 13-14 due to the special session of the legislature that was held in early October. The task force also held an additional meeting in December to deal with items that it did not have time to review at its November meeting. Expenses for the voting members totaled \$24,668 and for advisory members expenses totaled \$11,687.

During its final two meetings, the task force endorsed several changes to existing law, most of which were corrections to flaws in the law or which addressed implementation problems associated with the changes made by Laws 2005, Chapter 270. Other than a provision eliminating the option to deliver a voter's absentee ballot to the voter's polling place on election day, the task force members unanimously endorsed, or endorsed with one or two dissenting votes, nearly all the suggested changes to the Election Code. These changes are detailed in the November and December minutes.

**2005 APPROVED
WORK PLAN, MEETING SCHEDULE AND BUDGET
for the
ELECTION REFORM TASK FORCE**

Members

Sen. Linda M. Lopez, Co-Chair
Rep. Edward C. Sandoval, Co-Chair
Rep. Janice E. Arnold-Jones
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Joe Goldberg
Mary Herrera
Melinda Hughes
Audrey Jaramillo

Leland Lehrman
Jim Noel
Sen. Gerald Ortiz y Pino
Charlotte Roybal
Mary Ann Sedillo
Karen P. Smyer
Mario Trujillo
Rebecca Vigil-Giron, Secretary of State
Claire Weiner

Advisory Members

Sen. Rod Adair
Sen. Ben D. Altamirano
Rhoda Coakley
Rep. Kandy Cordova
Sen. Dede Feldman
Rep. Justine Fox-Young
Rep. Ted Hobbs
Denise Lamb

Rep. Ben Lujan
Rep. James Roger Madalena
Rep. W. Ken Martinez
Rep. Kathy A. McCoy
Sen. Mary Kay Papen
Rep. Debbie A. Rodella
Sen. Michael S. Sanchez
J. Fred Vigil

History

The election reform task force was created by the legislative council for the 2005 interim. During the 2005 legislative session, the legislature addressed a number of election issues and made numerous changes to the Election Code, in SJC/SRC/SB 678, 680, 718 & 735 (Laws 2005, Chapter 270). Due to the complexity and extent of these changes, the election reform task force was created to review the provisions and implementation of the new law, review the Election Code to ensure that any obsolete language that conflicts with federal law was adequately addressed and, if necessary, recommend legislation for the 2006 legislative session to address any implementation problems or other unintended consequences of the new law.

Work Plan

The election reform task force proposes to consider the following issues and topics during the 2005 interim and, if needed, develop appropriate legislation for the 2006 legislative session:

1. the cost of converting all voting machines in the state to provide for a voter verifiable

- paper ballot by December 31, 2006;
2. types of voting systems available that will comply with both HAVA and state law;
 3. new rules for handling provisional ballots;
 4. implementation of voter ID requirements and voter ID cards;
 5. procedures allowing voters to contest decisions to not count their provisional ballots;
 6. new rules for third-party registration organizations and agents and registration forms;
 7. procedures for random checks of voting system accuracy;
 8. timing of open registration and early voting;
 9. same-day voter registration;
 10. voter education and outreach to disenfranchised voters;
 11. up-front costs of recounts;
 12. problems with precinct level reporting of absentee and early vote totals and secrecy of the ballot;
 13. costs of implementing all the changes in law;
 14. types of addresses that are acceptable for registration purposes and petitions;
 15. state compliance with federal consent decrees;
 16. filing dates for minor-party candidates (if time allows); and
 17. other issues arising from review of the new law.

2005 Approved Meeting Schedule and Budget

| <u>Dates</u> | <u>Location</u> | <u>Voting Members</u> | <u>Advisory Members</u> |
|----------------|-----------------|-----------------------|-------------------------|
| July 6 | Santa Fe | \$4,452.44 | 2,954.12 |
| August 15 | Santa Fe | 4,452.44 | 2,954.12 |
| September 8-9 | Gallup, Laguna | 6,336.01 | 5,000.16 |
| October 10-11 | Santa Fe | 6,488.44 | 4,782.12 |
| November 10-11 | Santa Fe | 6,488.44 | 4,782.12 |
| | Subtotal | \$28,217.77 | \$20,472.64 |
| | | Total | \$48,690.41 |

AGENDAS

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
ELECTION REFORM TASK FORCE**

**July 6, 2005
Room 311
State Capitol**

Wednesday, July 6

10:00 a.m.

Call to Order

—Representative Edward C. Sandoval, Co-Chair
—Senator Linda M. Lopez, Co-Chair

Introduction of Task Force

Discussion of Work Plan and Itinerary for 2005 Interim

Public Input

12:00 noon

Adjourn

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
ELECTION REFORM TASK FORCE**

**August 15, 2005
Room 307
State Capitol**

Monday, August 15

- | | |
|------------|---|
| 10:00 a.m. | Call to Order and Approval of Minutes —Representative Edward C. Sandoval and Senator Linda M. Lopez, Co-chairs |
| 10:15 a.m. | Rules for Third-Party Registration Agents — Registration Forms — Federal Forms — Implementation — Associated Costs —Ernie Marquez, Director, Bureau of Elections |
| 12:00 noon | Lunch |
| 1:30 p.m. | Procedures for Voters to Challenge Rejected Provisional Ballots — Secretary of State Appeal Procedures Under HAVA — Costs —Ernie Marquez, Director, Bureau of Elections |
| 2:30 p.m. | Timing of Open Registration and Early Voting —Mary Herrera, Bernalillo County Clerk |
| 3:00 p.m. | Address Provisions for Registration and Petition Purposes —Ernie Marquez, Director, Bureau of Elections |
| 3:30 p.m. | Adjourn |

Revised: September 7, 2005

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
ELECTION REFORM TASK FORCE**

**September 8, 2005
McKinley County Courthouse, 207 W. Hill
County Commission Chambers, Gallup**

**September 9, 2005
Auditorium, Pueblo of Laguna Tribal Building
Laguna**

Thursday, September 8

- | | |
|------------|---|
| 10:00 a.m. | Call to Order and Approval of Minutes —Representative Edward C. Sandoval and Senator Linda M. Lopez, Co-Chairs |
| 10:15 a.m. | Poll Worker and County Clerk Training —Ernie Marquez, Director, Bureau of Elections |
| 11:15 a.m. | Legal and Practical Problems with Precinct Level Reporting by Type of Voting —Coni Jo Lyman, Chief Deputy Clerk, Curry County |
| 12:15 p.m. | Lunch |
| 1:30 p.m. | Procedures for Random Checks of Voting Machines, Auditing and Automatic Recounts —Paul Stokes, United Voters of New Mexico |
| 2:30 p.m. | Up-Front Costs of Recounts and Recount Procedures —Bob Walsh |
| 3:30 p.m. | Canvass Observers — Limits — Enforcement —Denise Lamb, Director of Elections, Santa Fe County |
| 4:30 p.m. | Costs of Implementation |

—Ernie Marquez, Director, Bureau of Elections

Friday, September 9

9:00 a.m. **Call to Order and Welcoming Remarks**
—Representative Edward C. Sandoval and Senator Linda M. Lopez,
Co-Chairs
—Roland Johnson, Governor, Pueblo of Laguna (Invited)

9:30 a.m. **Voter Education and Outreach to Disenfranchised Voters**
—Cathy Gorosope, Laguna Development Corporation
—Pueblo of Isleta (Invited)
—Pueblo of Acoma (Invited)
—Margaret Cerno, Pueblo of Laguna
—Edison Wauneka, Executive Director, Navajo Nation Election
Administration

10:30 a.m. **Implementation of Voter ID Requirements — Voter ID Cards**
—Ernie Marquez, Director, Bureau of Elections

11:30 a.m. **Costs of Implementation**
—Ernie Marquez, Director, Bureau of Elections

12:30 p.m. **Adjourn**

Revised: October 12, 2005

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
ELECTION REFORM TASK FORCE**

**October 13-14, 2005
Room 307, State Capitol
Santa Fe**

Thursday, October 13

- 10:00 a.m. **Call to Order and Approval of Minutes**
 —Representative Edward C. Sandoval and Senator Linda M. Lopez, Co-Chairs
- 10:15 a.m. **Voting Machine Demonstrations (Room 303)**
- 12:30 p.m. **Lunch**
- 1:30 p.m. **Voting Machine Considerations**
 —Stephen Fettig, Verified Voting New Mexico (invited)
- 2:00 p.m. **Types of Voting Machines Available That Will Comply with HAVA and State Law;
Costs of Converting Voting Systems to Voter Verifiable Paper Ballot System**
 —Ernie Marquez, Director, Bureau of Elections
- 3:00 p.m. **Rules for Handling Provisional Ballots and Canvass Observer Issues**
 —Ernie Marquez, Director, Bureau of Elections
 —Denise Lamb, Chief Deputy Clerk, Santa Fe County
- 4:00 p.m. **Public Comment**

Friday, October 14

- 9:00 a.m. **Call to Order**
 —Representative Edward C. Sandoval and Senator Linda M. Lopez, Co-Chairs
- 9:15 a.m. **Review of Laws 2005, Chapter 270, Suggested Fixes**
 —Ernie Marquez, Director, Bureau of Elections
 —Denise Lamb, Chief Deputy Clerk, Santa Fe County
- 11:00 a.m. **Precinct-Level Reporting Fix**
- 12:00 noon **Public Comment**
- 12:30 p.m. **Adjourn**

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
ELECTION REFORM TASK FORCE**

**November 10-11, 2005
Room 307, State Capitol
Santa Fe**

Thursday, November 10

- 9:00 a.m. **Call to Order and Approval of Minutes**
—Representative Edward C. Sandoval and Senator Linda M. Lopez,
Co-Chairs
- 9:15 a.m. **Federal Issues — State Compliance with Federal Consent Decrees;
Compliance of Voting Machines with Federal Law**
—Richard Dellheim, U.S. Department of Justice
- 10:15 a.m. **Election Day Voter Registration**
—Ludovic Blain, Associate Director, Democracy Program, Demos
—Matt Brix, Common Cause New Mexico
- 11:15 a.m. **Discussion of Legislative Proposals**
- 12:00 noon **Lunch**
- 1:30 p.m. **Discussion of Legislative Proposals**
- 5:00 p.m. **Public Comment**

Friday, November 11

- 9:00 a.m. **Call to Order**
—Representative Edward C. Sandoval and Senator Linda M. Lopez,
Co-Chairs
- 9:15 a.m. **Discussion of Legislative Proposals**
- 11:00 a.m. **Public Comment**
- 12:00 noon **Adjourn**

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
ELECTION REFORM TASK FORCE**

**December 14, 2005
Room 322, State Capitol
Santa Fe**

Wednesday, December 14

| | |
|-------------------|--|
| 9:00 a.m. | Call to Order and Approval of Minutes —Representative Edward Sandoval and Senator Linda M. Lopez, Co-Chairs |
| 9:15 a.m. | Discussion of Legislative Proposals |
| 12:00 noon | Lunch |
| 1:30 p.m. | Discussion of Legislative Proposals |
| 4:00 p.m. | Public comment |
| 5:00 p.m. | Adjourn |

MINUTES

**MINUTES
of the
FIRST MEETING
of the
ELECTION REFORM TASK FORCE**

**July 6, 2005
Room 311, State Capitol
Santa Fe**

The first meeting of the Election Reform Task Force for the 2005 interim was called to order by Representative Edward C. Sandoval, co-chair, on Wednesday, July 6, 2005, at 10:12 a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Sen. Linda M. Lopez, Co-Chair
Rep. Edward C. Sandoval, Co-Chair
Rep. Janice E. Arnold-Jones
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Mary Herrera
Melinda Hughes
Leland Lehrman
Sen. Gerald Ortiz y Pino
Charlotte Roybal
Karen P. Smyer
Mario Trujillo
Rebecca Vigil-Giron, Secretary of State

Absent

Audrey Jaramillo
Mary Ann Sedillo

Advisory Members

Rep. Kandy Cordova
Sen. Dede Feldman
Rep. Ted Hobbs
Denise Lamb
Rep. W. Ken Martinez
Fred Vigil

Sen. Rod Adair
Sen. Ben D. Altamirano
Rhoda Coakley
Rep. Justine Fox-Young
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Kathy A. McCoy
Sen. Mary Kay Papen
Rep. Debbie A. Rodella
Sen. Michael S. Sanchez

*Governor's appointees yet to be named at the time of meeting.

Staff

Paula Tackett
Tim Crawford

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Representative Sandoval welcomed all to the Election Reform Task Force meeting and asked that task force members and members of the audience introduce themselves.

Representative Sandoval asked Secretary of State Rebecca Vigil-Giron to give a brief summary on the recent history of election reform that precipitated the creation of the task force. She stated that, during the 2005 legislative session, sixty-five pieces of legislation were introduced wherein the legislature addressed a number of election issues and made several changes to the Election Code. Secretary Vigil-Giron stated that New Mexico has had a long history of election reform and the New Mexico Election Code is one of the best in the country. However, the 2000 election brought attention to several election issues that need to be addressed, including voter education, poll worker training, creation of a central voter data collection, upgrading voting machines and making the process more accessible for minorities and individuals with disabilities. The Election Reform Task Force was created to address these concerns, as well as to ensure that any obsolete language and conflicts with federal law are addressed. Lastly, Secretary Vigil-Giron mentioned the EAC (Election Assistance Commission), which was appointed by President George W. Bush and will adopt federal voting guidelines that will then in turn be adopted by the state of New Mexico.

Senator Lopez opened discussion on the proposed work plan and any additional interim agenda items that the task force felt may need to be added. Representative Sandoval asked members to try to focus on the agenda items listed on the work plan as much as possible due to the complexity of the issues and the time it will take to review them. He indicated that he saw this as a multi-year process and the focus this year needs to be on reviewing the bill that passed and its implementation. He asked the members to concentrate on what the legislature passed, to see if it all works and, if not, to make recommendations to get it fixed in early January.

Representative Arnold-Jones urged the task force to make it a goal to continue reviewing the Election Code and to update it when needed to address the incongruities in the code and to ensure that it will continue to be one of the nation's best. Representative Martinez expressed that the basic issue reflected in the proposed work plan is the authenticity of the system and asked the task force to target underrepresented areas and reach out to disenfranchised citizens to help get them out to vote. Secretary of State Rebecca Vigil-Giron reminded the task force that Section 203 of the Voting Rights Act of 1965 is due for reauthorization in 2007. Senator Ortiz y Pino asked that the task force address same day voter registration, which will make the process more accessible to minorities and the disadvantaged. Mr. Lehrman indicated that the issue of recounts needs to be addressed, including the up-front cost for the recount. Ms. Herrera indicated changes needed regarding voter ID cards, early voting and registration forms. Ms. Roybal raised provisional ballot concerns as they are used by large portions of minority populations.

Representative Sandoval stressed that the overall important key is education, not only the process, but what is available to the public. Other issues raised were a review of HB 350, mandating clerks to do precinct-by-precinct reporting of absentee ballots; the question of state preemption over municipal election laws, including home rule municipalities; third party registration issues; and the timing of open registration and early voting.

Representative Sandoval opened the floor to the audience members to express their concerns and the issues they wished to be reviewed. Feedback included voting and availability of voting

machines on reservations; implementation of a system wherein individuals can use receipts to vote in the event that their paper work has not been entered or has been entered incorrectly, denying them the chance to vote; ensuring the secrecy of ballots; the use of absentee ballots at polling places; and concerns about random checks on voting system accuracy.

The task force was reminded to keep in mind, while struggling to balance all the competing interests, that the overriding purpose of the election franchise in Article 7 of the constitution of New Mexico is to secure full secrecy of the ballot and the purity of elections and guard against abuse while providing for the efficient administration and conduct of elections. The most important issue is who gets to go into the voting booth fairly, freely and secretly to cast their ballots.

The task force reviewed the proposed dates for upcoming meetings and agreed upon the following schedule:

| <u>Date</u> | <u>Place</u> |
|----------------|--|
| August 15 | State Capitol, Santa Fe |
| September 8-9 | Gallup (8) and Laguna (9) |
| October 10-11 | State Capitol, Santa Fe *If these dates do not work due to conflicts then the task force will meet on October 6-7 |
| November 10-11 | State Capitol, Santa Fe |
| December | Task force will ask permission for a one-day meeting from the Legislative Council if deemed necessary. |

Representative Arnold-Jones asked staff to provide information electronically before the meetings when possible.

Staff was asked to arrange a demonstration of the voting machines to be set up in the rotunda during one of the meetings.

Representative Garcia moved to adopt the schedule and work plan as amended, which was seconded by Senator Ortiz y Pino. The motion passed unanimously (or with no dissenting votes).

There being no further business, the task force meeting adjourned at 12:06 p.m.

**MINUTES
of the
SECOND MEETING
of the
ELECTION REFORM TASK FORCE**

**August 15, 2005
Room 307, State Capitol
Santa Fe**

The second meeting of the election reform task force for the 2005 interim was called to order by Representative Edward C. Sandoval, co-chair, on Monday, August 15, 2005, at 10:15 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Linda M. Lopez, Co-Chair
Rep. Edward C. Sandoval, Co-Chair
Rep. Janice E. Arnold-Jones
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Mary Herrera
Melinda Hughes
Leland Lehrman
Jim Noel
Sen. Gerald Ortiz y Pino
Charlotte Roybal
Karen P. Smyer
Mario Trujillo
Claire Weiner

Advisory Members

Sen. Rod Adair
Rhoda Coakley
Rep. James Roger Madalena
Rep. W. Ken Martinez
Rep. Kathy A. McCoy
Rep. Debbie A. Rodella
J. Fred Vigil

Staff

Jon Boller
Evan Blackstone
Tim Crawford

Guests

The guest list is in the meeting file.

Absent

Joe Goldberg
Audrey Jaramillo
Mary Ann Sedillo
Rebecca Vigil-Giron, Sec. of State

Sen. Ben D. Altamirano
Rep. Kandy Cordova
Sen. Dede Feldman
Rep. Justine Fox-Young
Rep. Ted Hobbs
Denise Lamb
Rep. Ben Lujan
Sen. Mary Kay Papen
Sen. Michael S. Sanchez

Handouts

Copies of all handouts are in the meeting file.

Representative Sandoval welcomed all to the Election Reform Task Force meeting and asked that task force members and members of the audience introduce themselves.

Rules for Third-Party Registration Agents—Registration Forms—Federal Forms—Implementation—Associated Costs

Ernie Marquez, director of the bureau of elections, presented the task force with the rules governing third-party registration agents, noting that the rules took effect today, August 15, 2005. Mr. Marquez explained that third-party registration agents could register with either the county clerks or the secretary of state and that the law was designed to address abuse of the registration process. Organizations can no longer hold on to completed registration forms until the last minute (which caused major problems in many counties); rather, registration forms must be returned to the county clerk within 48 hours of their completion, which, he said, should not be a problem since the forms come with stamped and addressed return envelopes. The law also changed the requirements for registration forms, he explained, which, in conjunction with the registration requirements for third-party registration agents, are designed to allow tracking of both the agents and the forms used by them to register voters in order to make it more difficult for organizations or agents to selectively submit, or to forge names on, those forms.

Mr. Marquez went on to explain that there are still problems with the process, however, since there is a federal registration form available on the web that can also be used to register voters and that the secretary of state cannot control; consequently, organizations could subvert the tracking function of the new state forms by using the federal forms instead. Second, the new state forms raise concerns about costs and voter privacy. Regarding cost, Mr. Marquez said that the new forms cost nearly twice as much as the old forms (\$28.89/100 vs. \$15.65/100, with \$800,000 spent on the old forms during the last election cycle) because of the new requirement that carbon copies must be provided to both the voter and the registration agent. He said that his office opposes that requirement due to both cost concerns and the security of voter information, such as social security numbers and birth dates, that could be gleaned from the copies. Mr. Marquez offered an alternative form to the task force for consideration, which he said would still serve the tracking function but would lessen the chances for misuse of voter information and would cost no more than the old forms, though the law would have to be changed to allow use of this form.

Asked about limiting the distribution of the registration forms, Mr. Marquez replied that the rules allow county clerks to limit distribution to 50 forms at a time, though the secretary of state retains discretion to increase that number for special events or circumstances. He explained that last year one person returned nearly 1,500 unused forms. Other costs stemming from the new form are the changes that must be made to the forms used by all NVRA sites, such as motor vehicle departments, libraries, colleges and health office sites, and \$25,000 for software to track the new forms.

Q & A

Task force members asked how the definition of "organization" was arrived at such that registration agents for political committees and campaigns would be required to register. Mr. Marquez said the definition was worked out with the attorney general's office. Senator Duran requested that a clarification of the term be given, or possibly a rewording of the rule or statute be

considered, if necessary to keep candidates from having to register as third-party agents.

Asked why registration agents need a copy of the voters' personal information, Mr. Marquez replied the extra copy only benefits third-party registration agents of organizations, who do not have to copy that information for their records. Representative Arnold-Jones exclaimed "how dare we consider putting our voters at risk" by requiring carbon copies for registration agents, saying that the alternative form is much better and that she would go further by investing in the secretary of state's office to better protect voters' personal information, especially their social security numbers.

Ms. Roybal asked how other states handle the use of social security numbers and suggested that the state consider same-day registration.

Senator Ortiz y Pino said he understands that there are some 700,000 old registration forms that have not been used yet and wondered if they would be accepted if someone uses them. Mr. Marquez said that these forms would be accepted since there is no way of knowing who actually fills them out. Asked if the state could add instructions to the federal form, Mr. Marquez answered that the state could do that, but cannot add third-party agent numbers to that form.

In response to questions by Jim Noel, Mr. Marquez said that bar-code tracking numbers will be given to each third-party registration agent and that the alternative form is not only less costly, but better protects voters' personal information and is easier to file than the new form.

Mr. Lehrman asked if HAVA requires acceptance of the federal form, to which Mr. Marquez answered yes, and whether the current law allows the use of an identification number other than a voter's social security number, to which he replied no.

Senator Lopez said she prefers the alternative form, that the signature line should not be copied by third parties, either, and that, if necessary, legislation should be enacted to allow use of the alternative form.

Public Comment

The following are points made by various members of the public:

- selective enforcement of the law is a problem; one can use the federal form, make the required copies and return the completed form within 48 hours and fulfill the requirements of the law;
- a registration agent may have more than one number if that agent works for more than one organization;
- a person may still be able to ascertain a person's social security number and birth date from the blacked-out portions of carbon copies;
- the copy for the registration agent serves to protect the agent from others' misdeeds;
- a copy seems dangerous, though some information on the voter registration form is public record, other parts are not;
- registration should be made easier, not more difficult;
- New Mexico is one of five or six states that uses social security numbers as voter identification numbers; should the state consider using some other identifier?;
- if one signs the form as a registration agent, is that person vouching that the information is correct, especially if the voter is handed the form to fill out ?;
- is an ID required with the federal registration form as it is with state forms under HAVA?;

- registrants should be told to call the county clerk or secretary of state and given their phone numbers so that they can check if their registration form was turned in;
- the league of women voters never keeps voter information, and no organization should do so;
- why should anyone have a simpler or more complex registration procedure than another?;
- are we to believe that all third-party registration organizations are corrupt and that all candidates are pure, so that candidates and their organizations do not have to register as third-party registration agents and organizations?; and
- giving a copy of the registration form will just complicate things; the voter should be given a receipt with a number to call the county clerk or secretary of state to check on their registration.

The task force recessed for lunch, after which Zach Shandler of the attorney general's office addressed several questions concerning the definition given to "organization" in the secretary of state's rules. He said that the definition was made as comprehensive as possible to prevent organizations from claiming exemption from the law. Task force members asked if New Mexico could get some kind of exception to the use of the federal registration form, or to the format of the form, or if it could be used simply as a request for a New Mexico form. Mr. Marquez said that option could be explored. The county clerk of Curry county noted that she only has six of the necessary forms supplied to her office in time for the county fair, and that she was forced to download the federal form for distribution to various parties that are registering voters at the fair.

Finally, the issue of who should be penalized for not turning in forms within the allotted time was raised. It was suggested that organizations should be penalized, since third-party agents have to turn the completed forms over to the organizations, and thus are not always in control of the forms. Penalties currently only affect individual agents.

Procedures for Voter Challenges of Rejected Provisional Ballots

Mr. Marquez gave a brief overview of the process by which voters could challenge the rejection of their provisional ballots and said that the secretary of state has not yet promulgated rules on the process. In answer to a query about same-day voter registration helping to solve many of the problems with provisional voting, he said that he could not yet answer that question, though that topic is on the agenda for the October meeting of the task force. He added that now voters could be directed to the proper precinct under the new law and that this may help in those cases where the voter shows up at the wrong precinct.

Task force members asked that Section 61 of the election bill, which concerns absentee ballot delivery procedures, be put on one of the task force's future agendas.

Timing of Open Registration and Early Voting

Mary Herrera, Bernalillo county clerk, explained that because early voting begins so soon after the close of registration, it is very difficult to complete the process of entering new registrations before early voting begins, especially in a county with as many voters as Bernalillo county. Consequently, some voters may not be officially registered before they show up at the early voting sites. She said that the 48-hour return requirement on voter registration forms may help the situation somewhat.

Address Provisions for Registration and Petition Purposes

Task force members briefly discussed address requirements for registration and petitions purposes before asking that the association of counties, the attorney general and the Indian affairs department be asked to address the question at a future meeting.

There be no further business, the meeting adjourned at 4:00 p.m.

**MINUTES
of the
THIRD MEETING
of the
ELECTION REFORM TASK FORCE**

**September 8-9, 2005
City of Gallup
Pueblo of Laguna**

The third meeting of the Election Reform Task Force for the 2005 interim was called to order by Representative Edward C. Sandoval, co-chair, on Thursday, September 8, 2005, at 10:10 a.m. in the commissioners' meeting room at the McKinley County Courthouse in Gallup.

Present

Sen. Linda M. Lopez, Co-Chair
Rep. Edward C. Sandoval, Co-Chair
Rep. Janice E. Arnold-Jones
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Mary Herrera
Melinda Hughes
Leland Lehrman
Jim Noel
Charlotte Roybal
Karen P. Smyer
Mario Trujillo
Claire Weiner

Advisory Members

Sen. Rod Adair (9/9)
Rhoda Coakley
Rep. Kandy Cordova
Sen. Dede Feldman
Rep. James Roger Madalena
Rep. W. Ken Martinez
Rep. Debbie A. Rodella (9/9)

Absent

Joe Goldberg
Audrey Jaramillo
Sen. Gerald Ortiz y Pino
Mary Ann Sedillo
Rebecca Vigil-Giron, Sec. of State

Sen. Ben D. Altamirano
Rep. Justine Fox-Young
Rep. Ted Hobbs
Denise Lamb
Rep. Ben Lujan
Rep. Kathy A. McCoy
Sen. Mary Kay Papen
Sen. Michael S. Sanchez
J. Fred Vigil

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Charles H. Van Gorder
Evan Blackstone

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Thursday, September 8 - McKinley County Courthouse, Gallup**Call to Order, Welcome and Introductions**

Representative Edward C. Sandoval, co-chair, called the meeting to order, Representative Patricia A. Lundstrom welcomed the task force to Gallup and members of the committee and the audience introduced themselves.

County Clerk and Poll Worker Training

Ernie Marquez, director, Bureau of Elections, Office of the Secretary of State, briefed the task force on what his office is doing in the area of training county clerks and poll workers on the proper method of conducting elections. He mentioned such training is critical in view of the problems that occurred throughout the state in 2004 and the election procedures and requirements that were changed as a result of Laws 2005, Chapter 270. He stressed the importance of ensuring a uniform system in counties across the state; consistency in procedures and requirements is essential. Mr. Marquez stated that these concerns were considered by his office when drafting the 2006 Election Reform Training Manual for county clerks. Mr. Marquez reviewed the manual, which has recently been completed by his office, that addresses election day procedures and ethics training. Mr. Marquez also noted that both the federal Help America Vote Act (HAVA) and Laws 2005, Chapter 270 require the production of training guides for poll workers. The Bureau of Elections is currently working on the production of a DVD that will be distributed as well as a training manual for election day procedures.

Questioning and discussion by task force members included commentary on the following:

- the inconsistency of commercially produced training manuals and the necessity for other manuals for voting machines;
- production costs and funding sources for the training manuals and the number of copies that have been printed;
- issues concerning the substantive content of the manuals, including the acceptance of public comment and any relation to the New Mexico Administrative Code;
- issues related to Native American voting, including the development of a training CD in the Navajo and pueblo languages, the location of polling places in chapters of the Navajo Nation and in pueblos, translators for non-English speaking Native Americans, Native American voting coordinators and the recruitment of poll workers in Indian country;
- voter ID and potential problems with that requirement in Native American communities;
- funding for Native American voting assistance efforts;
- creating incentives to attract poll workers and the training of poll workers, including the utilization of community colleges and reimbursement for attendance at training sessions;
- the difficulty in recruiting poll workers who tend to be older and how more complicated election procedures make it more difficult to recruit poll workers;
- the use of high school students as poll workers; and
- absentee ballots.

Problems with Precinct Level Reporting

Coni Jo Lyman, chief deputy clerk of Curry County, addressed the task force regarding the problems imposed by the reporting requirements of Laws 2003, Chapter 378. That legislation requires the county clerk of each county to report to the secretary of state the total votes in each precinct for each candidate and ballot question by: 1) voters who vote in person on election day, 2) absentee voters who vote early in person; and 3) absentee voters who vote by absentee ballot by mail. Ms. Lyman explained the burden imposed on poll workers to comply with the requirements of Laws 2003, Chapter 378 in the elections of 2004. In Curry County, 30 percent of the voters voted by absentee ballot. In the primary election of 2004, poll workers spent two-and-a-half hours signing tapes. The reporting requirements of Laws 2003, Chapter 378 delayed the reporting of voting results and wrecked the budget of the Curry County Clerk's Office. Ms. Lyman indicated that in her opinion, only the candidates themselves and demographers benefited from the reporting of voting results at the precinct level. One other significant problem with reporting voting at the precinct level as required by Laws 2003, Chapter 378 was that in the 2004 primary election, the reporting of voting by type of voter in individual precincts could have lead to identifying how more than 600 individual voters voted, which would violate those voter's constitutional right to secrecy of the ballot.

Questioning and discussion by task force members included commentary on the following:

- concerns relating to the workload burden placed on county clerks and the costs to the counties as a direct result of the reporting requirements;
- how extending the reporting deadline by 40 days might alleviate election night delays but would not resolve the problems associated with compromising the secrecy of the ballot;
- use of the data generated by precinct level reporting;
- precinct voting reporting in other states; and
- reporting of undervotes and overvotes.

Public Comment

Comments from members of the public concerned the capabilities of voting machines currently used in McKinley County and the need for adequate poll worker training.

Minutes

Upon a motion by Senator Dianna J. Duran seconded by Jim Noel, the minutes of the August 15, 2005 task force meeting were unanimously approved.

Random Checks of Voting Machines, Auditing and Automatic Recounts

Paul Stokes, coordinator, United Voters of New Mexico, presented the task force with suggestions for revisions to the current statutory language regarding procedures for the random checks of voting machines. A copy of his itemized recommendations are contained in the meeting file.

Costs of Recounts and Recount Procedures

Bob Walsh was scheduled to present to the task force current statutory procedures for the recounting of election results. Mr. Walsh was unable to attend the meeting and his written comments were summarized for the task force by Evan Blackstone. Mr. Blackstone stated that Mr. Walsh's comments indicated that recounts by hand are the most reliable way to check and verify election results. He briefly summarized Mr. Walsh's numerous proposed revisions to current law that are intended to facilitate recounts of election results. Mr. Blackstone explained that the revisions would

allow any voter to apply for a recount or recheck of votes cast for a certain office or constitutional amendment. Additionally, the amendments aim to reduce the cost of recount and recheck proceedings by changing the calculation for the deposit an applicant for a recount or recheck must submit to the secretary of state. Finally, Mr. Blackstone reviewed Mr. Walsh's comments that propose the implementation of mandatory recounts if the difference between the number of votes received by the top two candidates for an office is less than two-tenths percent of the total votes cast for that office.

Because Mr. Walsh was not present at the meeting, Senator Linda M. Lopez suggested the committee revisit issues related to recount procedures and costs at a later meeting date.

Costs of Implementation

Mr. Marquez briefed the task force of the cost of implementing the third-party registration requirements of Laws 2005, Chapter 270 and of the cost of random voting machine checks. A recheck of the results of two percent of the voting machines statewide would cost approximately \$66,500. Following Mr. Marquez's presentation, the task force members discussed problems related to the use of third-party agents to register voters, including the problem of having to accept federal voting registration forms.

Recess

Following the presentation of Mr. Marquez on implementation costs, the task force recessed this meeting at 4:25 p.m.

Friday, September 9 - Tribal Administration Building, Pueblo of Laguna

The third meeting of the Election Reform Task Force for the 2005 interim was reconvened by Representative Sandoval on Friday, September 9, 2005, at 9:10 a.m. in the tribal administration building of the Pueblo of Laguna.

Welcome and Introductions

Roland Johnson, governor of the Pueblo of Laguna, welcomed the task force to the pueblo. He noted that although Native Americans were given the right to vote in 1924, it was not until 1948 that Native Americans in New Mexico were permitted to vote, a significant right and privilege. The Pueblo of Laguna has taken steps to educate its members regarding their right to vote and has added registered voters such that the pueblo now represents a significant percentage of the voters in Cibola County. Following Governor Johnson's remarks, members of the task force and the audience introduced themselves.

Pueblo of Laguna Voter Registration Efforts; Voting Irregularities in 2004

Cathy Gorospe of the Laguna Development Corporation described the Pueblo of Laguna and the voter registration and education efforts the pueblo had undertaken prior to the 2004 elections, including a get out the vote rally at the Route 66 Casino. As a result of those efforts, more than 500 additional voters were registered for the 2004 elections. She then turned to irregularities experienced by the Pueblo of Laguna in the 2004 elections. Pre-election problems included approximately 300 new voters whose registration forms had not been processed, voter registration cards were not received until October 26 and rejected registration forms were not properly processed. She observed that state-mandated time lines had not been met by the Cibola County Clerk's Office. Election day problems included voters who had not received their registration cards, discrepancies between state and county voter lists and a lack of envelopes from the county for provisional ballots. As a result of

these problems and inadequate training of election staff, Ms. Gorospe believed many ballots from the pueblo were not counted for the election. She also noted that the Pueblo of Acoma had missed three pages of the voting list for much of the day. Regarding Laws 2005, Chapter 270, she noted that village and precinct boundaries should be the same in order to minimize voter confusion regarding polling places and that many voters use post office boxes rather than street addresses.

Margaret Cerno, village voting coordinator for the Pueblo of Laguna, gave a PowerPoint presentation that outlined the complaints of voting irregularities and the investigation by the U.S. Department of Justice. Copies of related correspondence are contained in the meeting file. Lucille Hooper, tribal secretary for the Pueblo of Laguna, commented on the pueblo's voter registration and education efforts. She commented that voters in the pueblo should be informed of their rights to ensure that their votes are counted in every election. Ms. Hooper also called on the county commission to address problems concerning disenfranchised voters in Cibola County. She emphasized the need for increased training of county clerks and poll workers. She stated that poll workers in Laguna are tribal members that speak the native language and that they need more training to become familiar with the election process.

Eileen Martinez, Cibola County clerk, admitted that there had been problems during the 2004 election, but she thought those issues had been resolved at a June meeting with the U.S. Department of Justice and the Secretary of State's Office. The staff of her office has changed since that time and she has hired a member of the Pueblo of Laguna as her chief deputy. She indicated that she continues to be willing to meet with tribal members to ensure that the problems of 2004 will not be repeated.

Questioning and discussion by task force members included commentary on the following:

- the capability of Cibola County to utilize batch entries for updating voter information for the Secretary of State's Office and the availability of a T-1 line for that purpose;
- the use of physical addresses as required by state law and the possibility of utilizing GPS/GIS locators statewide for every domicile;
- whether sufficient resources are available for the training of county clerks and poll workers statewide;
- the receipt of voter registration cards after the commencement of early voting;
- the need to educate county commissioners regarding election problems as they control the purse strings;
- expanding the time period for early voting;
- the lack of a minimum time requirement between the receipt of a voter registration form and mailing a voter registration card and of consequences if the voter registration process is not done properly;
- inadequate procedures for resolving problems with flawed voter registration forms; and
- the failure to advise voters why their registration forms had been rejected.

Implementation of Voter ID Requirements and Cost

Mr. Marquez addressed the voter ID requirements of Laws 2005, Chapter 270. Information that may be required include a verbal or written statement by the voter of the last four digits of the voter's social security number, name and year of birth. Mr. Marquez estimates that there are 6,000 currently registered voters in New Mexico without social security numbers who will be required to obtain such numbers to re-register in the event they are ever purged from a voter list. He also noted that the law requires new voter ID cards to be sent out to all registered voters 40 to 60 days before a primary election at an estimated cost of \$1.625 million. The county clerks mail out the cards and are

reimbursed for the cost by the Secretary of State's Office. Martin Aguilar, Native American voting rights coordinator with the Bureau of Elections, noted that elections officials have discussed with tribal officials the need for photo identification cards for voters.

Questioning and discussion by task force members included commentary on the following:

- amending state law so that voter ID cards do not have to be sent out so often;
- the Secretary of State's Office taking on the burden of mailing voter ID cards rather than the county clerks;
- the specific costs for printing and mailing voter ID cards;
- ID cards provided by tribes and pueblos; and
- the requirements of Laws 2005, Chapter 270 for voter identification at the polls.

Adjournment

There being no further business, the third meeting of the Election Reform Task Force for the 2005 interim was adjourned at 1:10 p.m.

**MINUTES
of the
FOURTH MEETING
of the
ELECTION REFORM TASK FORCE**

**October 13-14, 2005
Room 307, State Capitol
Santa Fe**

The fourth meeting of the Election Reform Task Force for the 2005 interim was called to order by Representative Edward C. Sandoval, co-chair, on Thursday, October 13, 2005, at 10:15 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Sen. Linda M. Lopez, Co-Chair
Rep. Edward C. Sandoval, Co-Chair
Rep. Janice E. Arnold-Jones (10/13)
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Mary Herrera
Melinda Hughes
Leland Lehrman
Jim Noel
Sen. Gerald Ortiz y Pino (10/13)
Charlotte Roybal
Karen P. Smyer
Mario Trujillo
Claire Weiner

Advisory Members

Sen. Rod Adair
Sen. Dede Feldman (10/14)
Denise Lamb
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. Mary Kay Papen (10/13)
Rep. Debbie A. Rodella
J. Fred Vigil (10/13)

Absent

Joe Goldberg
Audrey Jaramillo
Mary Ann Sedillo
Rebecca Vigil-Giron, Sec. of State

Sen. Ben D. Altamirano
Rhoda Coakley
Rep. Kandy Cordova
Rep. Justine Fox-Young
Rep. Ted Hobbs
Rep. Kathy A. McCoy
Sen. Michael S. Sanchez

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller
Evan Blackstone
Tim Crawford

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, October 13

Voting Machine Demonstrations

Representatives from Election Systems & Software, Inc. (ES&S), and Sequoia Voting Systems, Inc. (Sequoia), introduced themselves and explained what products they would be demonstrating to the committee. Tom Ashberger from ES&S brought two machines that have been certified by the state, the iVotronic, a direct recording electronic system (DRE), to which a voter verifiable paper trail (VVPT) mechanism could be attached, and the Model 100 precinct ballot counter, which tabulates optical scan ballots. He also introduced Douglas Town, who is the company's executive liaison on disabilities, and who demonstrated ES&S's AutoMARK voting system, which has not yet been submitted to the state for certification. Sharee Noell from Sequoia brought her company's AVC Edge machine, a DRE system, which can also be outfitted with a VVPT mechanism, and its Optical Scan Insight system for tabulating optical scan ballots. It was noted that both the iVotronic and the AVC Edge systems fulfill the disability and language minority requirements of the federal Help America Vote Act of 2002 (HAVA). After the demonstrations of the different voting systems in the Capitol rotunda, the committee reconvened in Room 307.

Numerous questions were posed by committee members on HAVA requirements and related matters. It was stated that there needs to be at least one HAVA-compliant voting system in each of the approximately 1,400 polling places in the state, and that HAVA requires that those systems be in place beginning in 2006. The HAVA-compliant machines from the two companies both cost in the \$3,500 range, with an added \$1,000 or so per machine for the added VVPT mechanism (though this amount would be much more if there is a long ballot; for example, only 100 or so voters would fill the paper roll, requiring replacement of the VVPT cartridge since it is recommended that the whole cartridge be replaced when the paper roll is full). ES&S representatives said that their AutoMARK voting system would cost about \$4,500, plus another \$4,000 for an optical reader to go with it. The AutoMARK, they said, would allow blind and disabled voters to vote on a paper ballot without assistance, thus fulfilling the VVPT requirements in state law that go into effect in 2007. The ES&S representative recommended that the state go entirely with an optical scan system, in part to avoid potential problems associated with using a paper roll system on the direct recording electronic systems. The Sequoia representative said she would not recommend the optic scan system as the best way to go, partly because of greater predicted expense in the long run. Others mentioned that only one optic scan machine is required in each precinct since this machine simply tabulates the votes, so not as many machines are needed statewide. Committee members discussed the pros and cons of the various systems as they apply to different-sized precincts with different needs.

The discussion then turned to the question of who should set up the machines for each election, with some task force members expressing concern about having to rely on private companies to set the function and test each machine for each election. Melinda Hughes said that most county clerks do not have the expertise or money to do this themselves and, therefore, have to rely on the vendors. Denise Lamb suggested that though it would be nice for each county to have its own Ph.D. for setting up and testing voting systems, it is not practical; but perhaps the state could partner with one of the national labs or with a university, like Georgia did with Kennesaw State

University, to do this job in New Mexico. Several members of the task force said they thought this was a good idea. Other comments and questions included:

- the need for a requirement that voting system vendors use an open source code for input and output formats;
- how much it would cost to switch entirely to paper ballots that could be optically scanned, since in many places only 40 percent of the vote was on electronic machines anyway;
- the problems presented by having a straight-party ticket vote choice on voting machines and how that can contribute to undervotes; and
- the report on the preferences of disabled voters for the two HAVA-compliant machines certified in the state that has not been released by the secretary of state.

Voting Machine Considerations

Stephen Fettig and Charlie Stauss presented their concerns about the types of voting systems that will be used in the election process. They made the following points:

- the state needs well-tested systems to avoid problems on election day;
- paper ballots can be recounted even if there is a software error or some other problem with an electronic voting system;
- counting votes with optical scanning machines is very fast and recounts can be done at anytime;
- HAVA does not require the use of DREs;
- there should be no remote communication to voting machines;
- the state should strive for open source software and have data standards so that any vendor could input/output data to any machine—a copyright to one's software is adequate protection;
- DREs almost always increase costs of elections due to complexity, training requirements, maintenance costs, replacement frequency, etc.;
- new technology is forthcoming, but many machines that are HAVA-compliant, such as the AutoMARK, which is a much-improved type of voting system, are just not there yet; and
- the state should wait a year or so to purchase new voting systems, instead of being the test case on these new machines and technologies.

Leland Lehrman commented that sometimes more technology does not guarantee good results, and that the human element is always present. He suggested that the state may need to allocate resources to human beings to improve the process, and asked if the state could comply with HAVA without a technology/voting machine solution. Task force members then discussed how long the state has until it needs to comply with HAVA provisions, and if it has to take delivery of the new machines by January 1, 2006, or just have them ordered by that time. It was also suggested that the state bundle as much maintenance into the contracts as possible, since not all the available federal dollars would be spent on the machines themselves.

The co-chair asked that the final presentation scheduled for Thursday be combined with the first presentation on Friday.

Friday, October 14

Review of Laws 2005, Chapter 270

Ernie Marquez, director of the Bureau of Elections, and Denise Lamb, chief deputy clerk of

Santa Fe County, delivered the following comments to the task force.

To the Election Reform Task Force

Submitted by Denise Lamb

Honorable Members:

The comments on Chapter 270, Laws 2005 in this document are solely mine, based on my experience in administration of the New Mexico Election Code; as president of the National Association of State Election Directors (NASED); as vice chair of NASED's Voting Systems Standards Board when that committee developed the 2002 Federal Voting Systems Standards; and based on my involvement with congressional staff in the development of HAVA.

My comments do not necessarily reflect the position of the Santa Fe County clerk.

Chapter 270 – Conflicts, Concerns and Possible Solutions

Section 5 – Unique Identifier

Concern: Several thousand New Mexico voters registered to vote many years ago without social security numbers. Most of these registrations were done before the Internal Revenue Service required a social security number for tax purposes. There are approximately 5,800 of these voters statewide. The voters appear on the roster at their polling place under the last four digits of their certificate of voter registration — a number they did not pay attention to when they registered and never memorized.

When the voter appears at the polls, the name and year of birth will match the information on the roster, but the last four digits of the social security number will not match the numbers on the roster and the voter will then have to produce additional documentation. This requirement will also affect the same voters who vote by absentee ballot, because the last four digits of the social security number will not match the last four digits of the certificate number.

Santa Fe County has 851 of these voters with 72 percent of the total being over age 60 and 65 percent with a Hispanic surname. One of these voters is Governor Bruce King and another is former Secretary of State Ernestine Evans. This issue should be resolved so that elderly and minority voters do not feel extra scrutiny at the polls.

Recommended Solution: Send every one of these voters a letter requesting the social security number, which can be addressed by administrative rulemaking power of the secretary of state.

Related Issue:

From time to time, voters raise the issue of the use of the social security number and issues of possible identity theft. The legislature wisely has made these elements of voter registration privacy protected and has imposed felony penalties for their unauthorized use.

New Mexico has been using the social security number for voter identification purposes since 1934, when the Election Code first authorized its use. Since then, there has not been one reported case of identity theft from a certificate of voter registration. The state is exempt from the provisions of Section 7 of the Privacy Act by reason of being "grandfathered", as are five other states.

The legislature should be very cautious in relinquishing use of the social security number for voter registration purposes. There would be financial consequences under HAVA in having to re-configure the statewide voter file. Under Section 303 of HAVA, New Mexico is exempt from having to engage in data connections and contractual agreements between the Social Security Administration, Motor Vehicles Administration and other state or federal agencies. In addition, restricting use to only the last four digits of the social security number would result in an unreliable match for the purposes of felony convictions and death records.

Section 9 – Mailing of Voter Identification Cards

Concern: This is going to be expensive. By the time of the next primary election and if first class postage does not rise, it will cost the state over \$400,000 to accomplish this mailing. If the legislature agrees that this money is well spent, then it should be a regular appropriation to the secretary of state every two years and not just for the next election.

Recommended Solution: The counties should receive the money to do this in advance and then send the proof of expenditure to the secretary of state. The postal service does not extend credit for election mailings, and counties having to budget for this mailing in advance will result in some other equally important election function having less money.

Section 11 – A Single Training Manual

Concern: Because precinct training manuals also contain instructions on operation of the voting system and counties are permitted to choose any certified system, a single manual will include all the voting systems in use within the state. Including instructions on different voting systems not in use within a county will cause confusion for precinct boards. Also, the language requiring training of precinct boards in the county and the state canvassing process should be deleted. Precinct boards have no duties in the canvass. The emphasis for precinct board training should be on the duties at the polling place, which if improperly carried out can have a negative impact on the canvass.

Recommended Solution: Design a single precinct training manual on the administrative procedures to be used at the polling place. This manual should be designed in a three-ring binder format. Pages relating to the operation of the various voting systems can be inserted. This format will also allow for changes in procedures to be inserted into the binder as state laws or administrative rule changes. A considerable savings could be realized if manuals do not have to be reprinted in their entirety for each election cycle.

Amend section to delete language relating to instruction in the county and state canvass process.

Section 15 – County Canvass Observers

Concern: Santa Fe County, in a general election, could have as many as 52 major party candidate observers. This figure does not include minor party candidate observers or "election-related" organization observers. There is simply no space for this many people to sit or stand around existing work stations (32" x 58" of available space per station in Santa Fe County) while provisional and in-lieu-of absentee ballots are being qualified. The statute restricts access to the "room". Is Bernalillo County's warehouse a "room"? Are Santa Fe County's cubicles a "room"? This section needs to be amended; otherwise, the canvassing process will become chaotic and unmanageable. The county staff cannot secure the election returns, conduct the canvass and engage in crowd control at the same time without undesirable results.

Permitting the chief election officer of the county to determine how many observers is "functional" is a step in the right direction; however, this is bound to lead to disagreements that might end up before the courts and delay the canvassing process.

The most serious concern with this section is the conflict between it and federal law.

Section 302 of HAVA states: "Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot."

Section 15 permits observers to "observe and document" the process of "verifying paper ballots". In the verification of provisional ballots, the voter's eligibility is determined by viewing the voter's registration on the computerized voter file or, if necessary, the original certificate of registration. Observers will be able to view and "document" this information. The voter data includes privacy-protected information, such as date of birth and social security number. The observers will also have access to the name of the voter, party affiliation and whether or not the ballot is to be counted. This appears to directly conflict with the federal law.

Recommended Solution: Amend this section. There needs to be some consideration of what constitutes a "room". The Office of the Attorney General should be asked to look at the apparent conflict between federal and state law.

Section 20 – First-Time Registrants by Mail

Concern: Paragraph (4) of Subsection I of Section 1-4-5.1 NMSA 1978 was amended to expand the documents that a first-time registrant by mail can submit as proof of identification. One of the permitted documents is "a voter identification card".

A first-time registrant in New Mexico cannot possibly possess a voter identification card, because this person has never been registered before and the county clerk has never sent this person a card.

Recommended Solution: Amend this language out of the statute and allow the other documents to serve as identification for first-time voters by mail.

Section 41 – Third-Party Agents Collecting Absentee Ballot Applications

Concern: Third-party agents (unlike third-party registration agents, this term is not defined in the Election Code) are required to submit absentee ballot applications within 48 hours of their completion.

In order for the secretary of state to establish procedures making the application traceable to the person and organization, there needs to be some process to register both people and organizations. The language added for third-party registration agents cannot just be transferred to this process without more specific language in the statute to apply to these individuals and organizations.

A "traceable" form means that each absentee ballot application, like a certificate of registration, needs a unique number. Presently, the application is posted on the secretary of state's web page so any voter can obtain a copy. In order to provide traceable numbers, the application will have to be removed from public access and made available only through the secretary of state and county clerks.

Question: How can the state or county clerks track exactly when the voter filled out the application to ensure that it is turned in within 48 hours?

Recommended Solution: Amend the statute to set up a procedure similar to registration of third-party registration agents, although how effective that statute will be remains to be seen. Early experiences indicate it is easily circumvented.

Another solution is to remove these third-party agents from the process completely. The previous statute on absentee voting required the voter to directly contact the county clerk and request an application for absentee voting. In recent years, the absentee process has become more driven by parties, candidates and special interest groups. This has caused considerable damage to the integrity of the absentee voting process.

There have been many reports in recent elections from voters who have received an absentee ballot, but deny that they ever applied for one. There are also reports from voters who believe that the ballot they receive is a mistake, discard it and then find out on election day (when they tell the truth) that they cannot be issued another ballot.

The legislature might want to consider if the involvement of so many "third-party" organizations in voter registration, absentee voting and the canvass of elections is actually adding to the integrity of the process or damaging the integrity of the process.

Section 42 – Absentee Application for Federal Qualified Elector or Overseas Voter

Concern: HAVA exempts first-time registrants by mail that are military voters or disabled from the identification requirements of HAVA, because Congress recognized that it might be a hardship for these voters to access copying machines.

Recommended Solution: Extend the same exemption in state statute.

Section 43 – Issuance of Absentee Ballot

Concern: In 2003, the legislature amended Section 1-6-4.1 NMSA 1978 to permit the "electronic transmission" (email or facsimile) of ballots to and from military and overseas absentee voters. The voter is required to waive secrecy of the ballot on an affidavit.

Section 43 now amends Subsection G of Section 1-6-4 NMSA 1978 to permit any voter (inside or outside the United States) to request that a ballot be electronically transmitted to this voter as late as the Friday before the election. There is no provision made for return transmittal or a waiver of secrecy of the ballot.

A voter outside the country and most within the United States can have little real expectation of the ballot being returned by conventional mail. If a voter can pay for special shipping, there is some possibility of the voter's ballot being returned timely, but for the average voter, this is a bad joke.

Also, the legislature should consider the wisdom of any return transmittal by email. This type of ballot transmittal is risky because along with the ballot, malicious computer viruses could infect a county clerk's computer systems at a very critical time in the election process and negatively impact election security.

If the legislature believes that the stand-alone, non-networked voting systems in use in New Mexico pose a danger to election security, the idea of electronic transmission of ballots to election offices by unsecured home computers should be terrifying.

Recommended Solution: Because the Pentagon's Federal Overseas Voting Program invested over \$60,000,000 in an Internet voting program that was abandoned and because New Mexico has made no investment in network security for this purpose, this section should be deleted from the law.

Section 48 – Permitting Absentee Ballots to be Returned to Polling Place

Concern: In a positive effort to receive timely reporting of the absentee ballot count, Section 50 permits the early tabulation of absentee results. With this provision, it would be possible to have absentee results very early on election night.

However, permitting absentee ballots to be returned to polling places is counter-productive. In many rural counties, the distance from the polling place to the county courthouse is considerable and absentee precinct boards may have to wait for several hours after the polls close before having the results.

A further complication is that Subsection G of Section 1-6-14 NMSA 1978 of the Election Code provides that "Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places....". That closing time is 7:00 p.m. This conflict should be resolved.

Recommended Solution: If the legislature wishes more timely reporting of the absentee vote count, allowing delivery of absentee ballots to the polling places will not accomplish the intended outcome, because the absentee precinct board will have to wait until all the precinct returns have been

delivered to report results. The voter should bear some responsibility for delivery of absentee ballots by 7:00 p.m. on election day. The conflict between the two sections of the code should be resolved.

Section 51 – Handling Absentee Ballots by Absent Voter Precinct Boards

Concern: Paragraph (2) of Subsection D of Section 1-6-14 NMSA 1978 specifies that the absentee precinct board may insert ballots for tabulation between 8:00 a.m. and 5:00 p.m. on the five days preceding election day.

However, Section 1-6-23 NMSA 1978 states that the county clerk shall determine the hours during which the absent voter precinct shall be open for delivery and registering of absentee ballots on the five days preceding election day.

Recommended Solution: This conflict between statutes should be resolved before the next election.

Section 56 – Voting System – Voter Verified Paper Trail

Concern: Section 56 specifies that the "voter verified and auditable paper trail" is to be used as the record of the election for the purposes of recount and a "true and correct record of the voter's choices". In other words, it is the "ballot". However, it is not defined as a ballot in the Election Code, nor is it given the same security protections as a ballot, thereby making it more vulnerable to tampering. Questions that must be asked are: Is the printer producing the "paper trail" to have a seal, as do voting machines and ballot boxes? If so, how do precinct workers deal with paper jams? Who is authorized to open the printer and under what circumstances? Can "paper trails" be impounded? Do the "paper trails" from a single machine need to remain intact—in other words, how are they handled for a recount? How long is the tape from one machine? If the tape remains intact, that limits the number of people who can recount—if it does not, there is no integrity.

Recommended Solution: Amend the Election Code to address these issues.

Concern: Section 56 mandates that counties replace their existing voting systems with either a paper ballot system or a voting system with the so-called "voter verified paper trail". One huge issue is the cost, which the secretary of state will address; however, the legislature needs to be aware that counties still owe the State Board of Finance for outstanding loans on their existing equipment.

There are pro and con arguments that need to be considered on both sides of the "voter verified paper trail" issue. These arguments need to be weighed carefully, or the new systems used may result in less voter confidence, usability and reliability. Some of these arguments, for the purpose of discussion, are:

Discussion Item 1:

Proponents claim that the use of the "voter verified paper trail" will prevent hackers or insider election officials, intent on manipulation of the outcome, from tampering with the voting system and the voter will have assurance the ballot is counted as cast and that ballots are auditable.

However, to be discussed is whether this is truly the case. What would prevent a sophisticated tamper-minded individual from manipulating the software that controls the printer that produces the paper trail? If physical or remote access is possible that enables tampering to the system itself, there is nothing to prevent tampering to the printer software, which is an integral part of the system. The printout is created by the computer and only in the event of a total recount would the tampering be discovered. Also, if the hypothetical hacker is clever enough to insert a malicious code into a voting system, is it not logical to assume that the number of votes altered would be large enough to avoid any automatic recount? Is it not also safe to assume that the software could be manipulated so any detection of changed votes by the voter could be corrected in a subsequent printout?

Another issue is how many voters will actually check the paper. In Clark County, Nevada, 36 percent of voters did not want to spend the time necessary to review the printout. Will voters notice any errors? In a recent study done at the Massachusetts Institute of Technology, a significant number of voters simply did not notice errors on the paper trail system (and the participants were students in the Electrical Engineering and Computer Sciences Departments!).

Also, the paper trail will not add integrity to the system unless every voter is required to review it. If even one voter neglects to review the paper printout, its integrity as an audit trail is worthless, because after the fact, a voter or candidate can challenge the paper trail as not having been reviewed by every voter.

Fourth, does paper actually add integrity to the voting system? While there have been numerous instances of tampering with paper ballots historically and in recent elections (2004, Hamilton Co., Tennessee; 2002, Broward Co., Florida; 2002, Illinois; 2001, San Francisco, California; and 2000, Benton Co., Arkansas), there has not been one documented instance of fraud with electronic systems. Even without intentional tampering, a human programming error in Bernalillo County in 2000 resulted in 60,000 straight-party absentee paper ballots not being counted for nearly a week after the election. A complicating factor was that the county clerk had ballots printed on paper rather than cardstock that could not be read by the machine, resulting in a protracted hand tally and much media attention and scrutiny. This human error did not instill voter confidence.

Electronic voting systems have been used for 20 years in hundreds of jurisdictions and thousands of elections and there is not a single incident supporting the conclusion that any program manipulation has occurred or that there has been an election result altered by a hacker or a conspiracy by local election officials manipulating election results through modification of either programming or reporting.

Discussion Item 2:

Individuals in favor of the "paper trail" point to New Mexico's "high" undervote rate as evidence that voting systems were misprogrammed or tampered with in the 2004 election.

However, the data needs to be placed in historical perspective. What are historic undervote rates in New Mexico and what are they on different types of voting equipment used historically? What are causes of undervoting that are not related to voting equipment?

Looking at the historic undervote in New Mexico one easily observes that the 2.5 percent undervote in New Mexico in 2004 is not atypical. There have been 19 presidential, gubernatorial or U.S. Senate (top of the ballot at the time) elections in New Mexico that were equal to or exceeded the 2.5 percent undervote reported in 2004. These were: 1926 (2.5 percent), 1932 (3.7 percent), 1938 (3.5 percent), 1948 (4 percent), 1952 (2.5 percent), 1958 (3.8 percent) and 1966 (5.7 percent). These elections were all held with hand-counted paper ballots. On mechanical lever voting machines, the undervote rates were: 1970 (3.8 percent), 1972 (2.6 percent), 1974 (3.1 percent), 1978 (3.7 percent), 1982 (3.2 percent) and 1986 (3.4 percent). Finally, when the state began its transition to optical scan and DRE voting systems, undervote rates were: 1988 (2.7 percent), 1990 (4.3 percent), 1992 (3.7 percent), 1994 (4.7 percent), 1996 (4.1 percent), and 1998 (3.9 percent).

Perhaps one of the causes of undervoting in New Mexico on electronic voting machines, in particular the first generation DREs, is straight-party voting. If a voter does not read the directions, presses the straight party option and then decides (to be extra sure) to press the button for president, the presidential vote is deselected and no vote has been cast.

Until recently, few studies have been done regarding undervoting, although election administrators have been aware of the phenomenon for years. A recent study done by Stephen Knack and Martha Kropf at the University of Maryland indicates that undervoting is related to race, class and poverty. This would tend to indicate that undervoting may be a voter education issue, rather than a technology issue, and as such, the legislature may want to undertake a systematic program of voter education.

One of the great ironies of the paper versus electronic voting system debate is that the new generation of electronic voting systems can help eliminate undervoting. Unlike the first generation systems, new systems prompt the voter when undervoting is detected and multiple opportunities are given to correct the ballot. Valencia County saw a decline in undervoting when it transitioned to a new system.

Discussion Item 3:

How will the "paper trail" provide verification for Native Americans with an unwritten language?

New Mexico has nine Native American languages and eight of these are oral languages and not written. Will Native American voters have the same opportunity to "verify" their choices as all other voters? What about visually impaired or blind voters?

Discussion Item 4:

Currently, the certified voting systems with a "paper trail" are on a printer with a continuous take up spool. That is, a voter with permit #6 will be the sixth voter on a "paper trail" system. It is easily

possible (election records are all public) to use the "paper trail" to determine exactly for whom a voter voted. Does this violate the Constitution of New Mexico and the Election Code in terms of secrecy of the ballot?

Recommended Solution: The legislature may have been hasty in enacting this section of the Election Code. Issues of usability by pollworkers and voters have not been studied and because only two jurisdictions in the United States have conducted elections with "paper trail" machines, there is little research to draw on for an objective opinion.

Much research is currently being done on voting methods that provide additional security. These include the feasibility of open source codes, source codes escrowed at the National Software Library at the National Institute of Standards and Technology and cryptographic systems. Also promising is random parallel monitoring of systems, where a system is pulled out of service on election day to check its functions.

In making a decision on this complicated issue prior to reviewing available research and looking at other points of view, New Mexico may find itself with a complicated and unworkable voting system that decreases, rather than increases, voter confidence.

It may be appropriate, if the legislature believes so, to use optical scan paper ballots rather than the untested "paper trail" systems. However, the legislature should be aware that technological advances are rapidly changing the voting systems available and in a relatively short period of time, the state may wish to take advantage of new technology. Also, the legislature needs to be aware of the long history of problems and fraud associated with paper ballots.

Section 60 – Election Day Delivery of Absentee Ballot by Voter

Concern: See Section 48.

Section 70 – Provisional Voting Information to Voter

Concern: Title III of HAVA requires that each state enact an administrative appeals process for alleged violations of Title III, which includes provisional voting.

The New Mexico secretary of state has enacted an administrative appeal process (1.10.18 NMAC) and created a toll-free number (which is detached from the provisional ballot envelope at the polls and given to each provisional voter) for voters to inquire as to the disposition of their ballot and procedures for filing an administrative appeal.

Creating an additional appeal process at the local level is duplicative. The cost and administrative problem created in sending certified mailings during the canvass of the election is overly burdensome.

Recommended Solution: Repeal this section.

Section 75 – Random Voting System Check – Recount

Concern: The word "random" is not defined, nor is the secretary of state given authority by rule to define it. Who chooses the precincts? How are they chosen?

It is instructive to note that the recent gubernatorial recount in Washington State (almost entirely paper ballots) resulted in three different totals, two as a result of hand counts, which were different each time. Subsequent litigation was not settled until months after the election.

Recommended Solution: If the legislature believes that random recounts for the office of president or governor adds to the integrity of the process, either the statute or administrative rule should define the terms used in this section.

Discussion

Mario Trujillo urged everyone to take these suggestions very seriously. In response to a comment that Ms. Lamb's concerns about the county canvass observer provisions are anticipating something that is not likely to happen, and that the process needs to be transparent, Ms. Lamb said she agrees that the process needs to be transparent, but that verification of ballots is different from counting ballots and that it would still be best to attempt to define terms before an election contest occurs. Representative Madalena asked what the responsibility of the secretary of state is for educating voters, especially Native American voters, in order to encourage more participation in the process. Mr. Marquez and Ms. Lamb said that the Bureau of Elections has not had a new position added to the bureau since 1984, and that currently the bureau consists of five people and has never even had a deputy director. Representative Garcia offered to carry a bill creating more positions in the Bureau of Elections. Representative Lujan expressed concern about the voters delivering absentee ballots to the polls and the delay that would cause in reporting election returns. He also said that he hopes the committee would talk about minor party filing deadlines at its next meeting. Other suggestions and topics discussed included:

- changing Section 60 of Chapter 270 to indicate who should deliver absentee ballots to the absent voter precinct polls;
- having the secretary of state, instead of county clerks, mail out voter identification cards before the general election instead of the primary election;
- allocating more resources to the election process;
- elimination of the straight-party voting option to alleviate voter confusion and decrease undervotes that are due to voter confusion;
- spoiling absentee ballots at the polling place and allowing voters to vote at precincts on election day;
- putting suggestions on election fixes on a web site;
- delaying the purchase of VVPT machines since the ones demonstrated today are actually confusing to use;
- having individuals get authorization and training to be registration agents from county clerks, and having them swear to uphold the law and be residents of New Mexico;
- repealing provisions allowing absentee ballots to be delivered to polling places on election day;
- better education of precinct workers to help cut down on mistakes;
- allowing representatives from political parties to attend pollworker training sessions; and

- banning early election returns from being broadcast before polls close, and not requiring reporting of returns by county clerks for 24 to 48 hours after the polls close so they would have time to do their work.

The minutes from the previous meeting were approved without objection. The co-chairs asked staff to summarize the task force's work for the next meeting so that it could consider what recommendations to make to the legislature for the upcoming session. The meeting adjourned at 1:00 p.m.

**MINUTES
of the
FIFTH MEETING
of the
ELECTION REFORM TASK FORCE**

**November 10-11, 2005
Room 307, State Capitol
Santa Fe**

The fifth meeting of the election reform task force for the 2005 interim was called to order by Representative Edward C. Sandoval, co-chair, on Thursday, November 10, 2005, at 9:15 a.m. in room 307 of the State Capitol in Santa Fe.

Present

Sen. Linda M. Lopez, Co-Chair
Rep. Edward C. Sandoval, Co-Chair
Rep. Janice E. Arnold-Jones (11/10)
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Mary Herrera
Melinda Hughes
Leland Lehrman
Jim Noel
Sen. Gerald Ortiz y Pino
Charlotte Roybal
Karen P. Smyer
Mario Trujillo
Rebecca Vigil-Giron, Secretary of State
Claire Weiner

Absent

Joe Goldberg
Audrey Jaramillo
Mary Ann Sedillo

Advisory Members

Sen. Rod Adair
Rep. Kandy Cordova (11/10)
Sen. Dede Feldman
Rep. Ted Hobbs (11/10)
Denise Lamb (11/10)
Rep. James Roger Madalena (11/11)
Rep. Kathy A. McCoy
Rep. Debbie A. Rodella
J. Fred Vigil

Sen. Ben D. Altamirano
Rhoda Coakley
Rep. Justine Fox-Young
Rep. Ben Lujan
Rep. W. Ken Martinez
Sen. Mary Kay Papen
Sen. Michael S. Sanchez

Staff

Jon Boller
Evan Blackstone
Tim Crawford
Ramona Schmidt

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, November 10, and Friday, November 11**Federal Election Law Issues**

Richard Delheim, an attorney with the civil rights division of the United States department of justice, explained how Section 203 of the federal Voting Rights Act applies to New Mexico, noting that throughout the state, ballots must be written in both English and Spanish, and that 11 counties are required to provide translators for various Native American languages, most of which are not written languages. He said that the purpose of Section 203 is to allow minority language groups to more fully participate in the election process, and that the civil rights division has worked closely with New Mexico over the years. Six counties have been or are currently working under federal consent decrees or letters of agreement that outline how those counties can ensure that the requirements of Section 203 are fulfilled, which include Bernalillo, Cibola, McKinley, San Juan, Sandoval and Socorro counties, he said.

Mr. Delheim also commented on the federal Help America Vote Act (HAVA) requirements for voting systems, noting that while the department of justice had issued a memorandum opinion on compliance as it pertains to disabled voters, an opinion had not been issued as it concerns Section 203 requirements. He said that voting systems for disabled voters do not have to be the same as those for nondisabled voters, as long as both systems allow the two groups the same opportunity for access and participation (the memorandum is in the meeting file). Asked when New Mexico must purchase the HAVA-compliant voting systems, Mr. Delheim replied that congress set the deadline for January 1, 2006, and that all states should be making their best effort at having the new systems in place by then.

Election Day Voter Registration

Matt Brix, executive director, common cause New Mexico, Ludovic Blain, associate director, democracy program, and Ashley Moore, secretary, university of New Mexico young Democrats, explained how election day registration would work. Also participating by phone was Jackie Gonzales, the Laramie county clerk in Wyoming, one of the states that has implemented election-day registration. Ms. Moore said students are often frustrated when they are unable to register right before an election, and that election-day registration would increase the turnout of young voters. Mr. Blain informed the committee that six states already have election-day registration and that it has several advantages, including increased voter participation, reduction in third-party registration agent problems, simplification of polling place procedures in that fewer people have to vote on provisional ballots and simplification of vote counting due to fewer provisional ballots being used. Ms. Gonzales explained how the system works in Wyoming. A representative from the league of women voters said the organization is very supportive of removing barriers to voting, and that Wisconsin has had election-day registration since 1976. Members of the task force expressed concern about the possibility of fraud, and asked the presenters to send the task force a white paper on how to prevent fraud. Asked if any states have abandoned election-day registration, Mr. Blain said that Ohio and Oregon have done so. Senator Adair cited an audit of Wisconsin's election process that indicated that

approximately 1,800 out of 45,000 cards were returned as undeliverable following the election, which may mean that many people registering to vote on election day were not using valid addresses. Senator Lopez suggested that the proponents do an analysis of the Wisconsin system so that the legislature could properly evaluate the pros and cons of the system. Several members of the task force expressed support for the idea of election-day registration and suggested that if the legislature could not get to the issue during the upcoming short legislative session, the task force should look carefully at the issue next interim.

Legislative Proposals

Jon Boller and Evan Blackstone, task force staffers, presented the task force with a list and drafts of possible amendments to the Election Code that were based on task force discussions over the interim. Representative Sandoval and Senator Lopez asked that those amendments that deal with potential problems that need to be addressed before the 2006 election be considered first. The task force acted on those 13 issues and left 10 issues to be discussed during the December meeting. The following is a list of the amendments endorsed by the task force. Unless otherwise indicated, these amendments were adopted without objection by the members of the task force.

PROVISIONS OF THE CLEAN-UP BILL APPROVED AT THE NOVEMBER MEETING

- 1) Require the secretary of state to mail voter identification cards to all registered voters between 60 and 75 days before the general election. (Section 1-11-12.1 NMSA 1978)
- 2) Allow for separate precinct board training manuals or sections of the standard manual for the different voting systems used in each county and eliminate references to canvassing. (Section 1-2-4 NMSA 1978)
- 3) Strike "voter identification card" from Section 1-4-5.1 NMSA 1978.
- 4) Extend to state law federal HAVA exemption from ID requirements for first-time registrants by mail who are disabled or overseas military. (Section 1-6-4 NMSA 1978)
- 5) Remove provision in Subsection G allowing electronic transmission of absentee ballots. (Section 1-6-5 NMSA 1978)
- 6) Repeal provisions allowing absentee mail ballots to be delivered on election day to the voter's precinct and clarify hours that absent voter precinct polling place may be open. (Sections 1-6-10, 1-6-14, 1-6-23 and 1-12-8.2 NMSA 1978) (By a vote of 9 to 6)
- 7) Remove "recheck" from Section 1-14-22 NMSA 1978.
- 8) Have an appeal of county clerk decisions to not count a provisional ballot go to the secretary of state and notify voter how to appeal that decision. (Section 1-12-25.2 NMSA 1978) (By a vote of 12 to 3)
- 9) Require a county clerk to supply the district attorney and secretary of state with the names and registration receipt numbers for voters who came to vote with their registration receipts but whose certificates of registration were not found. (Section 1-12-8.1 NMSA 1978)

10) Allow voting systems used to meet disability and language access requirements of HAVA to use audio confirmation of the voter's ballot choices, extend deadline for purchase of new voting systems until 2007 and treat the voter verifiable and auditable paper trail as if it were a ballot. (Section 1-9-7.1 NMSA 1978)

11) Repeal provisions on absentee ballot application distribution and collection by third parties. (Section 1-6-4.3 NMSA 1978) (By a vote of 13 to 2)

12) Support appropriation for new staff positions in the bureau of elections and a special appropriation for implementation of provisions of Laws 2005, Chapter 270. (By a vote of 13 to 2)

The committee adjourned at 1:00 p.m. on Friday, November 11.

**MINUTES
of the
SIXTH MEETING
of the
ELECTION REFORM TASK FORCE**

**December 14, 2005
Room 322, State Capitol
Santa Fe**

The sixth meeting of the Election Reform Task Force for the 2005 interim was called to order by Representative Edward C. Sandoval, co-chair, on Wednesday, December 14, 2005, at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Sen. Linda M. Lopez, Co-chair
Rep. Edward C. Sandoval, Co-chair
Rep. Janice E. Arnold-Jones
Sen. Dianna J. Duran
Rep. Mary Helen Garcia
Mary Herrera
Melinda Hughes
Leland Lehrman
Sen. Gerald Ortiz y Pino
Charlotte Roybal
Karen P. Smyer
Mario Trujillo
Claire Weiner

Advisory Members

Sen. Ben D. Altamirano
Sen. Dede Feldman
Rep. Ted Hobbs
Denise Lamb
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. W. Ken Martinez
Rep. Kathy A. McCoy
Sen. Mary Kay Papen
Rep. Debbie A. Rodella
J. Fred Vigil

Staff

Jon Boller
Evan Blackstone
Tim Crawford

Guests

Absent

Joe Goldberg
Audrey Jaramillo
Jim Noel
Mary Ann Sedillo
Rebecca Vigil-Giron, Sec. of State

Sen. Rod Adair
Rhoda Coakley
Rep. Kandy Cordova
Rep. Justine Fox-Young
Sen. Michael S. Sanchez

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, December 14

Senator Ortiz y Pino moved to reconsider item number six from the November meeting. Item number six struck the provisions allowing a voter to deliver the voter's absentee ballots to the voter's precinct on election day. The motion to reconsider failed on a tie vote of six to six.

Legislative Proposals

Jon Boller and Evan Blackstone, task force staff, presented the task force with the remaining issues on the a list of possible amendments to the Election Code presented at the November meeting. The task force endorsed seven of the proposals. The following is a list of the amendments endorsed by the task force. Unless otherwise indicated, these amendments to the Election Code were adopted unanimously without objection by the members of the task force:

- 1) require reporting of vote totals for each precinct without compromising the voters' secrecy of the ballot (new section of law);
- 2) require that the voter shall be given a receipt (instead of a carbon copy) when registering to vote that can be traced back to the registration agent and information on how to check on whether the registration form was received by the county clerk (Section 1-4-5 NMSA 1978);
- 3) allow a voter to provide a physical address by way of a GIS location (Section 1-4-5.3 NMSA 1978) (by a vote of 12-1);
- 4) clarify that the county clerk should notify a person if the person's registration is rejected for any reason and how the problem can be remedied (Section 1-4-11 NMSA 1978);
- 5) require third-party registration organizations to provide the names and address of their officers and provide for penalties for violations of the registration process (Section 1-4-49 NMSA 1978);
- 6) require minor parties to certify their candidates on the day following the primary election instead of the second Tuesday of July (Section 1-8-2 NMSA 1978) (by a vote of 12-1); and
- 7) remove language authorizing the state to require a deposit of the full cost of a recount (Section 1-14-15 NMSA 1978).

Public Comment

Joe Kupfer, liaison to the HAVA Accessibility Work Group, expressed concern about recent reports in the media that the work group had endorsed the ES&S AutoMARK voting system as the "best" machine for the disabled community. He stressed that the work group had not done so, and that the Sequoia AVC Edge and ES&S iVotronic, along with the AutoMARK, equally met the overall accessibility requirements of people with a broad range of disabilities. He also noted that the working group had not yet tested the AutoMARK system when the advocates for the AutoMARK voting system first claimed that nine out of 10 of the participating disabled voters at the meeting preferred the AutoMARK.

Paul Stokes, United Voters of New Mexico, Charlie Strauss, Verified Voting New Mexico, and Terry Riley, Democratic Friends, urged the task force to consider requiring the use of paper ballots for all elections and listed several problems with the voter verifiable paper trail requirements imposed in Chapter 270 as they related to direct recording electronic voting systems. Mr. Stokes also asked that the task force consider hand recount provisions in the law, and Mr. Riley said that audit provisions should also be addressed.

There being no further business, the task force adjourned at 12:20 p.m.

ENDORSED LEGISLATION

HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE ELECTION REFORM TASK FORCE

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR PRECINCT BOARD TRAINING
MANUALS; CHANGING REGISTRATION PROCEDURES AND REQUIREMENTS;
ELIMINATING PROVISIONS FOR ELECTRONIC TRANSMISSION OF ABSENTEE
BALLOTS; REPEALING PROVISIONS ALLOWING ABSENTEE VOTERS TO
DELIVER THEIR ABSENTEE BALLOTS TO THEIR PRECINCT ON ELECTION
DAY; CLARIFYING WHEN THE ABSENT VOTER PRECINCT POLLING PLACES
MAY BE OPEN; EXTENDING THE DEADLINE FOR PURCHASE OF VOTING
SYSTEMS; ALLOWING AUDITORY VERIFICATION OF BALLOT CHOICES BY
DISABLED OR ALTERNATIVE LANGUAGE VOTERS; PROVIDING FOR SECURITY
OF VOTER VERIFIABLE AND AUDITABLE PAPER TRAILS; CHANGING THE
DISTRIBUTION REQUIREMENTS FOR VOTER IDENTIFICATION CARDS;
REQUIRING REPORTING OF FAILED REGISTRATIONS FOR INVESTIGATION
OR PROSECUTION; REQUIRING THE SECRETARY OF STATE TO INFORM A
VOTER OF APPEAL PROCEDURES FOR COUNTY CLERK DECISIONS
CONCERNING THE COUNTING OF THE VOTER'S PROVISIONAL BALLOT;

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underscored material = new
[bracketed material] = delete

1 AMENDING AND REPEALING SECTIONS OF THE ELECTION CODE; DECLARING
2 AN EMERGENCY.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 Section 1. Section 1-2-4 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 25, as amended) is amended to read:

7 "1-2-4. SECRETARY OF STATE--TRAINING AND INSTRUCTIONS TO
8 PRECINCT BOARDS--TRAINING MANUAL.--

9 A. The secretary of state shall provide:

10 (1) instructions for the precinct board, which
11 shall include a brief nontechnical explanation of their duties
12 as required by the Election Code; and

13 (2) a single training manual containing
14 standard guidelines for the operations and processes of
15 statewide elections, including pre-election day activities,
16 election-day activities and post-election-day activities [~~and~~
17 ~~county and state canvassing processes~~]. Separate manuals for
18 voting systems may be provided for each county, or if the
19 single training manual is in a loose-leaf binder format,
20 sections for the voting systems used in a given county may be
21 inserted in the training manual for that county.

22 B. When any specific duty is imposed by the
23 instructions issued under the Election Code, the duty shall be
24 deemed to be a requirement of the law."

25 Section 2. Section 1-4-5.1 NMSA 1978 (being Laws 1993,

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Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,
as amended) is amended to read:

"1-4-5.1. METHOD OF REGISTRATION--FORM.--

A. A qualified elector may apply for registration
by mail, in the office of the secretary of state or county
clerk or with a registration agent or officer.

B. A person may request certificate of registration
forms [~~may be requested~~] from the secretary of state or any
county clerk in person, by telephone or by mail for [~~oneself~~]
that person or for [~~others~~] other persons.

C. Except as provided in Subsection D of this
section, a qualified elector who wishes to register to vote
shall fill out completely and sign the certificate of
registration. The qualified elector may seek the assistance of
any person in completing the certificate of registration.

D. A qualified elector who has filed for an order
of protection pursuant to the provisions of the Family Violence
Protection Act and who presents a copy of that order from a
state or tribal court to the registration officer shall not be
required to provide address information on the certificate of
registration.

E. Completed certificates of registration may be
mailed or presented in person by the registrant or any other
person to the secretary of state or presented in person by the
registrant or any other person to the county clerk of the

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1 county in which the registrant resides.

2 F. If the registrant wishes to vote in the next
3 election, the completed and signed certificate of registration
4 shall be delivered or mailed and postmarked at least twenty-
5 eight days before the election.

6 G. Upon receipt of a certificate of registration,
7 the secretary of state shall send the certificate to the county
8 clerk in the county where the qualified elector resides.

9 H. Only when the certificate of registration is
10 properly filled out, signed by the qualified elector and
11 accepted for filing by the county clerk as evidenced by the
12 county clerk's signature or stamp and the date of acceptance
13 thereon and when notice has been received by the registrant
14 shall it constitute an official public record of the
15 registration of the qualified elector.

16 I. The secretary of state shall prescribe the form
17 of the certificate of registration, which form shall be a
18 postpaid mail-in format and shall be printed in Spanish and
19 English. The certificate of registration form shall be clear
20 and understandable to the average person and shall include
21 brief but sufficient instructions to enable the qualified
22 elector to complete the form without assistance. The form
23 shall also include:

24 (1) the question "Are you a citizen of the
25 United States of America?" and boxes for the applicant to check

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1 to indicate whether the applicant is or is not a citizen;

2 (2) the question "Will you be at least
3 eighteen years of age on or before election day?" and boxes for
4 the applicant to check to indicate whether the applicant will
5 be eighteen years of age or older on election day;

6 (3) the statement "If you checked 'no' in
7 response to either of these questions, do not complete this
8 form.";

9 (4) a statement informing the applicant that:

10 (a) if the form is submitted by mail by
11 the applicant and the applicant is registering for the first
12 time in New Mexico, the applicant must submit with the form a
13 copy of: 1) a current and valid photo identification [~~or voter~~
14 ~~identification card~~]; or 2) a utility bill, bank statement,
15 government check, paycheck, student identification card or
16 other government document, including identification issued by
17 an Indian nation, tribe or pueblo, that shows the name and
18 address of the applicant; and

19 (b) if the applicant does not submit the
20 required identification, [~~he~~] the applicant will be required to
21 do so when voting in person or absentee; and

22 (5) a statement requiring the applicant to
23 swear or affirm that the information supplied by the applicant
24 is true."

25 Section 3. Section 1-6-4 NMSA 1978 (being Laws 1969,

.159530.3

Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED
ELECTOR--OVERSEAS VOTER.--

A. Application by a federal qualified elector or an
overseas voter for an absentee ballot shall be made on the
official postcard form prescribed or authorized by the federal
government to the county clerk of the county of ~~[his]~~ the
applicant's residence. The form shall allow the applicant to
receive an absentee ballot for all elections within an election
cycle.

B. Application by a voter for an absentee ballot
shall be made only on a form prescribed by the secretary of
state in accordance with federal law. The form shall identify
the applicant and contain information to establish ~~[his]~~ the
applicant's qualification for issuance of an absentee ballot
under the Absent Voter Act; provided that on the application
form for a general election ballot there shall be no box, space
or place provided for designation of the voter's political
party affiliation.

C. Each application for an absentee ballot shall be
subscribed by the applicant and shall require the applicant's
printed name, year of birth and unique identifier to be
supplied by the applicant, which shall constitute the required
form of identification, except for new registrants ~~[that]~~ who
have registered by mail and at that time did not provide

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1 acceptable identification; provided, however, that absent
2 uniformed services voters, overseas voters and voters with
3 disabilities shall not be required to submit any identification
4 other than their printed name, year of birth and unique
5 identifier.

6 D. An application for an absentee ballot by a
7 federal qualified elector or an overseas voter shall be
8 accepted at any time preceding the general election."

9 Section 4. Section 1-6-5 NMSA 1978 (being Laws 1969,
10 Chapter 240, Section 131, as amended) is amended to read:

11 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

12 A. The county clerk shall mark each completed
13 absentee ballot application with the date and time of receipt
14 in the clerk's office and enter the required information in the
15 absentee ballot register. The county clerk shall then
16 determine if the applicant is a voter, an absent uniformed
17 services voter or an overseas voter.

18 B. If the applicant does not have a valid
19 certificate of registration on file in the county and is not a
20 federal qualified elector or if the applicant states that the
21 applicant is a federal qualified elector but the application
22 indicates the applicant is not a federal qualified elector, an
23 absentee ballot shall not be issued and the county clerk shall
24 mark the application "rejected" and file the application in a
25 separate file from those accepted.

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1 C. The county clerk shall notify in writing each
2 applicant of the fact of acceptance or rejection of the
3 application and, if rejected, shall explain why the application
4 was rejected.

5 D. If the applicant has on file with the county a
6 valid certificate of registration that indicates that the
7 applicant is a voter who is a new registrant and who registered
8 by mail without submitting the required voter identification,
9 the county clerk shall notify the voter that the voter must
10 submit with the absentee ballot the required physical form of
11 identification. The county clerk shall note on the absentee
12 ballot register and signature roster that the applicant's
13 absentee ballot must be returned with the required
14 identification.

15 E. If the county clerk finds that the applicant is
16 a voter other than a federal qualified elector or overseas
17 voter, the county clerk shall mark the application "accepted"
18 and, beginning twenty-eight days before the election, deliver
19 an absentee ballot to the voter in the county clerk's office or
20 mail to the applicant an absentee ballot and the required
21 envelopes for use in returning the ballot. If the county clerk
22 finds that the applicant is a federal qualified elector or
23 overseas voter, the county clerk shall mark the application
24 "accepted" and beginning forty-five days before the election,
25 mail to the applicant an absentee ballot and the required

1 envelopes for use in returning the ballot. Acceptance of an
2 application of a federal qualified elector constitutes
3 registration for the election in which the ballot is to be
4 cast. Acceptance of an application from an overseas voter who
5 is not an absent uniformed services voter constitutes a request
6 for changing information on the certificate of registration of
7 any such voter. An absent voter shall not be permitted to
8 change party affiliation during those periods when change of
9 party affiliation is prohibited by the Election Code. Upon
10 delivery of an absentee ballot to a voter in the county clerk's
11 office or mailing of an absentee ballot to an applicant who is
12 a voter, an appropriate designation shall be made on the
13 signature line of the signature roster next to the name of the
14 voter who has been provided or mailed an absentee ballot.

15 F. If an application for an absentee ballot is
16 delivered in person to the county clerk and is accepted, the
17 county clerk shall provide the voter an absentee ballot and it
18 shall be marked by the applicant in a voting booth of a type
19 prescribed by the secretary of state, sealed in the proper
20 envelopes and otherwise properly executed and returned to the
21 county clerk or [~~his~~] the clerk's authorized representative
22 before the voter leaves the office of the county clerk. The
23 act of marking the absentee ballot in the office of the county
24 clerk shall be a convenience to the voter in the delivery of
25 the absentee ballot and does not make the office of the county

1 clerk a polling place subject to the requirements of a polling
2 place in the Election Code other than is provided in this
3 subsection. It is unlawful to solicit votes, display or
4 otherwise make accessible any posters, signs or other forms of
5 campaign literature whatsoever in the clerk's office or
6 alternate voting location. Absentee ballots may be marked in
7 person at the county clerk's office during the regular hours
8 and days of business beginning on the twenty-eighth day
9 preceding the election and from 10:00 a.m. to 6:00 p.m. on the
10 Saturday immediately prior to the date of the election. In
11 marking the absentee ballot, the voter, pursuant to the
12 provisions of Section 1-12-15 NMSA 1978, may be assisted by one
13 person of the voter's choice.

14 G. Absentee ballots shall be [~~airmailed or, if so~~
15 ~~requested, electronically transmitted~~] mailed to applicants
16 [~~temporarily domiciled inside or outside the continental limits~~
17 ~~of the United States~~] not later than on the Friday immediately
18 prior to the date of the election.

19 H. An absentee ballot shall not be delivered or
20 mailed by the county clerk to any person other than the
21 applicant for such ballot.

22 I. The secretary of state and each county clerk
23 shall make reasonable efforts to publicize and inform voters of
24 the times and locations for absentee voting; provided, however,
25 that notice is provided at least ten days before early voting

1 begins.

2 J. The secretary of state shall establish
3 procedures for the submittal, when required by federal law, of
4 required voter identification with mailed-in absentee ballots."

5 Section 5. Section 1-6-10 NMSA 1978 (being Laws 1969,
6 Chapter 240, Section 136, as amended) is amended to read:

7 "1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK.--

8 A. The county clerk shall mark on each completed
9 official mailing envelope the date and time of receipt in the
10 clerk's office, record this information in the absentee ballot
11 register and safely keep the official mailing envelope unopened
12 in a locked and number-sealed ballot box until it is delivered
13 to the proper absent voter precinct board or until it is
14 canceled and destroyed in accordance with law.

15 B. The county clerk shall accept completed official
16 mailing envelopes until 7:00 p.m. on election day [~~and the~~
17 ~~absent voter precinct board shall accept completed official~~
18 ~~mailing envelopes from precincts within the county of the~~
19 ~~voters who turned in their absentee ballots at their precinct~~
20 ~~by the close of polls on election day~~]. Any completed official
21 mailing envelope received after that time shall not be
22 delivered to a precinct board but shall be preserved by the
23 county clerk until the time for election contests has expired.
24 In the absence of a restraining order after expiration of the
25 time for election contests, the county clerk shall destroy all

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1 late official mailing envelopes without opening or permitting
2 the contents to be examined, cast, counted or canvassed.

3 Before their destruction, the county clerk shall count the
4 numbers of late ballots from voters, federal voters, overseas
5 citizen voters and federal qualified electors and report the
6 number from each category to the secretary of state.

7 C. At 5:00 p.m. on the Monday immediately preceding
8 the date of election, the county clerk shall record the numbers
9 of the unused absentee ballots and shall publicly destroy in
10 the county clerk's office all such unused ballots. The county
11 clerk shall execute a certificate of destruction, which shall
12 include the numbers on the absentee ballots destroyed. A copy
13 of the certificate of destruction shall be sent to the
14 secretary of state."

15 Section 6. Section 1-6-14 NMSA 1978 (being Laws 1971,
16 Chapter 317, Section 11, as amended) is amended to read:

17 "1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER
18 PRECINCT BOARDS.--

19 A. Before opening an official mailing envelope, the
20 presiding judge and the election judges shall determine that
21 the required information has been completed on the reverse side
22 of the official mailing envelope.

23 B. If the voter's signature is missing, the
24 presiding judge shall write "Rejected" on the front of the
25 official mailing envelope. The election clerks shall enter the

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1 voter's name in the signature rosters and shall write the
2 notation "Rejected--Missing Signature" in the "Notations"
3 column of the signature rosters. The presiding judge shall
4 place the official mailing envelope unopened in an envelope
5 provided for rejected ballots, seal the envelope and write the
6 voter's name on the front of the envelope and deposit it in the
7 locked ballot box.

8 C. A lawfully appointed challenger may examine the
9 official mailing envelope and may challenge the ballot of any
10 absent voter for the following reasons:

11 (1) the official mailing envelope has been
12 opened prior to being received by the absent voter precinct
13 board; or

14 (2) the person offering to vote is not a
15 federal voter, federal qualified elector, overseas voter or
16 voter as provided in the Election Code.

17 Upon the challenge of an absentee ballot, the election
18 judges and the presiding election judge shall follow the same
19 procedure as when ballots are challenged when a person attempts
20 to vote in person. If a challenge is upheld, the official
21 mailing envelope shall not be opened but shall be placed in an
22 envelope provided for challenged ballots. The same procedure
23 shall be followed in canvassing and determining the validity of
24 challenged absentee ballots as with other challenged ballots.

25 D. If the official mailing envelope has been

1 properly subscribed and the voter has not been challenged:

2 (1) the election clerks shall enter the absent
3 voter's name and residence address as shown on the official
4 mailing envelope in the signature rosters and shall mark the
5 notation "AB" opposite the voter's name in the "Notations"
6 column of the signature rosters; and

7 (2) only between 8:00 a.m. and 5:00 p.m. on
8 the five days preceding election day, including Saturday and
9 Sunday, and beginning at 7:00 a.m. on election day, under the
10 personal supervision of the presiding election judge, shall the
11 election judges open the official mailing envelope and the
12 official inner envelope and insert the enclosed ballot into an
13 electronic voting machine to be registered and retained until
14 votes are counted and canvassed following the closing of the
15 polls on election night.

16 E. It is unlawful for a person to disclose the
17 results of a count and tally or the registration on a voting
18 machine of absentee ballots prior to the closing of the polls.

19 F. Absentee ballots shall be counted and tallied on
20 an electronic voting machine as provided in the Election Code.

21 G. Absent voter precinct polls shall close ~~[at the~~
22 ~~time prescribed by the Election Code for other polling places]~~
23 in accordance with Section 1-6-23 NMSA 1978, and the results of
24 the election shall be certified as prescribed by the secretary
25 of state.

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1 H. If an absentee ballot does not contain the
2 identification required pursuant to Subsection D of Section
3 1-6-5 NMSA 1978, it shall be handled as a provisional paper
4 ballot in accordance with the Election Code."

5 Section 7. Section 1-6-23 NMSA 1978 (being Laws 1975,
6 Chapter 255, Section 95, as amended) is amended to read:

7 "1-6-23. ABSENT VOTER PRECINCT POLLING PLACE--HOURS ON
8 ELECTION DAY AND SUBSEQUENT DAYS.--The county clerk or
9 statutorily appointed supervisor of the election shall
10 determine the hours between 8:00 a.m. and 5:00 p.m. during
11 which the absent voter precinct polling place shall be open for
12 delivery and registering of absentee ballots on the five days
13 preceding election day and the hours during which the absent
14 voter precinct polling place shall be open for the delivery,
15 registering and counting of ballots on election day and
16 subsequent days until all ballots are counted; provided that
17 the absent voter precinct polling place opens at 7:00 a.m. on
18 election day."

19 Section 8. Section 1-9-7.1 NMSA 1978 (being Laws 2005,
20 Chapter 270, Section 56) is amended to read:

21 "1-9-7.1. VOTING SYSTEM--VOTER VERIFIABLE AND AUDITABLE
22 PAPER TRAIL.--

23 A. All voting systems used in elections covered by
24 the Election Code shall have a voter verifiable and auditable
25 paper trail; provided, however, that:

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1 (1) voting systems owned or used by a county
2 on ~~[the effective date of this 2005 act]~~ July 1, 2005 that do
3 not have a voter verifiable and auditable paper trail may be
4 used until the first occurrence of the following:

5 ~~[(1)]~~ (a) sufficient federal, state or
6 local funds are available to replace the voting system; or

7 ~~[(2)]~~ (b) December 31, ~~[2006]~~ 2007; and

8 (2) a voting system purchased to meet federal
9 requirements for alternative languages accessibility and for
10 accessibility for individuals with disabilities may employ an
11 auditory system to allow the voter to verify ballot choices in
12 lieu of the voter verifiable and auditable paper trail.

13 B. In any event, no voting system shall be used
14 that has not been certified by the secretary of state.

15 C. The voter verifiable and auditable paper trail
16 shall be considered a ballot for purposes of the Election Code,
17 and the secretary of state shall promulgate rules to ensure the
18 secrecy and security of the voter verifiable and auditable
19 paper trail that is accorded to other types of ballots
20 authorized by the Election Code.

21 ~~[E.]~~ D. As used in this section:

22 (1) "voting system" includes a paper ballot
23 system in which the voter physically marks the paper ballot to
24 indicate the voter's choices; and

25 (2) "voter verifiable and auditable paper

1 trail" means a paper record of the voter's choices, viewable
2 prior to casting the ballot, which may be the paper ballot
3 itself; the paper trail shall be used by the state or its
4 contractor to check either the veracity of a machine count or
5 the count itself, or may be used in a recount proceeding, and
6 in case of a discrepancy, the voter verifiable and auditable
7 paper trail shall be considered the true and correct record of
8 the voter's choices."

9 Section 9. Section 1-11-12.1 NMSA 1978 (being Laws 2005,
10 Chapter 270, Section 9) is amended to read:

11 "1-11-12.1. VOTER IDENTIFICATION CARDS--DISTRIBUTION.--

12 A. Between sixty and [~~forty~~] seventy-five days
13 before each [~~primary~~] general election, the [~~county clerk~~]
14 secretary of state shall send to each registered voter in [~~the~~]
15 each county a voter identification card indicating the voter's
16 name, address and voting precinct and the name of the current
17 county clerk in that county; provided, however, that a
18 registrant shall still be sent a voter identification card upon
19 filing of the registrant's certificate of registration with the
20 county clerk as provided in Section 1-4-12 NMSA 1978.

21 [~~B. The county clerk may apply to the office of the~~
22 ~~secretary of state for reimbursement of costs related to~~
23 ~~supplying voter identification cards.~~

24 ~~G.]~~ B. The secretary of state shall promulgate
25 rules to ensure that all registered voters receive a voter

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1 identification card before each [~~primary~~] general election [~~and~~
2 ~~reimburse the county for the costs of supplying and~~
3 ~~distributing the cards~~]."

4 Section 10. Section 1-12-8.1 NMSA 1978 (being Laws 2005,
5 Chapter 270, Section 62) is amended to read:

6 "1-12-8.1. CONDUCT OF ELECTION--USE OF VOTER'S [~~COPY~~]
7 RECEIPT OF CERTIFICATE OF REGISTRATION--PROCEDURES.--If a voter
8 whose name is not in the signature roster presents the voter's
9 [~~duplicate~~] receipt of the voter's certificate of registration,
10 the voter shall be allowed to vote on a provisional ballot in
11 the proper precinct in accordance with the provisions of
12 Section 1-5-10 NMSA 1978. The election judge shall inform the
13 voter that the voter will be notified by the county clerk to
14 provide a copy of the receipt of the certificate of
15 registration to the county clerk if the original certificate is
16 not located. A note shall be entered on the signature roster
17 indicating that the voter's certificate of registration should
18 be checked by the county clerk. For the purposes of
19 investigation or prosecution, the county clerk shall provide
20 the district attorney and the secretary of state with the
21 person's name and address and the corresponding receipt number
22 of the person's certificate of registration for each person
23 whose certificate of registration is not located."

24 Section 11. Section 1-12-25.2 NMSA 1978 (being Laws 2003,
25 Chapter 356, Section 3, as amended) is amended to read:

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1 "1-12-25.2. CONDUCT OF ELECTION--PROVISIONAL VOTING--
2 INFORMATION TO VOTER--STATUS OF VOTER'S BALLOT.--

3 A. If a voter is required to vote on a provisional
4 paper ballot, the election judge shall give the voter written
5 instructions on how the voter may determine whether the vote
6 was counted and, if the vote was not counted, the reason it was
7 not counted.

8 B. The ~~[county clerk]~~ secretary of state shall
9 establish a free access system, such as a toll-free telephone
10 number or internet web site, that a voter who casts a
11 provisional paper ballot may access to ascertain whether the
12 voter's ballot was counted and, if the vote was not counted,
13 the reason it was not counted and how to appeal that decision
14 to the secretary of state. Access to information about an
15 individual voter's provisional ballot is restricted to the
16 voter who cast the ballot.

17 ~~[G. Beginning with the closing of the polls on~~
18 ~~election day through the tenth day following the election, the~~
19 ~~county clerk shall notify by certified mail each person whose~~
20 ~~provisional ballot was not counted of the reason the ballot was~~
21 ~~not counted. The voter shall have until the Friday prior to~~
22 ~~the meeting of the state canvassing board to appeal to the~~
23 ~~county clerk a decision to reject the voter's ballot. The~~
24 ~~secretary of state shall establish procedures for handling~~
25 ~~appeals to the county clerk.]"~~

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1 Section 12. Section 1-14-22 NMSA 1978 (being Laws 2005,
2 Chapter 270, Section 76) is amended to read:

3 "1-14-22. CONTESTS AND RECOUNTS [~~AND RECHECKS~~]
4 PROVISIONAL, ABSENTEE AND OTHER PAPER BALLOTS.--The secretary
5 of state shall issue rules governing and allowing procedures
6 for reviewing the qualification of provisional ballot
7 envelopes, absentee and other paper ballots in the case of a
8 contest or recount [~~or recheck~~] of election results. All
9 rejected provisional paper ballot envelopes shall be included
10 in any contest or recount [~~or recheck~~] of election results, and
11 a review of the qualification of provisional ballot envelopes
12 shall occur in a recount."

13 Section 13. REPEAL.--Sections 1-6-4.3 and 1-12-8.2 NMSA
14 1978 (being Laws 2005, Chapter 270, Sections 41 and 60) are
15 repealed.

16 Section 14. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.

underscored material = new
[bracketed material] = delete

HOUSE BILL

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

FOR THE ELECTION REFORM TASK FORCE

AN ACT

RELATING TO ELECTIONS; ESTABLISHING PRECINCT REPORTING
REQUIREMENTS; CHANGING VOTER REGISTRATION PROCEDURES; REQUIRING
THIRD-PARTY REGISTRATION ORGANIZATIONS TO REGISTER WITH THE
STATE; CHANGING THE FILING DATE FOR MINOR PARTY CANDIDATES;
CHANGING PROVISIONS ON DEPOSITS FOR COSTS OF RECOUNTS AND
RECHECKS; PROVIDING PENALTIES; REPEALING PROVISIONS OF THE
ELECTION CODE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Election Code is enacted
to read:

"[NEW MATERIAL] REPORTING OF VOTE TOTALS BY PRECINCT--
VOTING DATA MAINTAINED BY PRECINCT.--

A. The county clerk shall report to the secretary
of state the vote totals in each precinct for each candidate

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1 and ballot question to the extent that the county clerk can do
2 so without compromising the secrecy of a voter's ballot.

3 B. The county clerk shall maintain voting data by
4 precinct that includes the number of voters who voted early in-
5 person, absentee by mail and on election day and the number of
6 voters who voted using each type of voting system; provided
7 that the county clerk may combine data in accordance with rules
8 promulgated by the secretary of state to protect the secrecy of
9 each voter's ballot. The county clerk shall not be required to
10 report the data required by this subsection until at least
11 sixty days after the election."

12 Section 2. Section 1-4-5 NMSA 1978 (being Laws 1969,
13 Chapter 240, Section 63, as amended) is amended to read:

14 "1-4-5. METHOD OF REGISTRATION--UNLAWFUL USE OF
15 INFORMATION--PENALTY.--

16 A. A qualified elector may apply to a registration
17 officer or agent for registration.

18 B. The registration officer or agent or qualified
19 elector shall fill out each of the blanks on the certificate of
20 registration by typing or printing in ink. The [voter]
21 qualified elector shall be given a receipt [~~for the original,~~
22 ~~and the registration agent shall receive a copy that omits the~~
23 ~~voter's social security number and date of birth and which~~
24 that shall contain:

25 (1) a number traceable to the registration

1 agent or officer; and

2 (2) a statement informing the qualified
3 elector that if the qualified elector does not receive
4 confirmation of the qualified elector's registration within
5 twenty days of the receipt date, that the qualified elector
6 should contact the office of the county clerk in the county
7 where the qualified elector resides or the office of the
8 secretary of state.

9 C. The qualified elector shall subscribe a
10 certificate of registration as follows:

11 (1) by signing the certificate of registration
12 using the qualified elector's given name, middle name or
13 initial and last name; or

14 (2) if any qualified elector seeking to
15 register is unable to read and write either the English or
16 Spanish language or is unable to read or write because of some
17 physical disability, the certificate of such person shall be
18 filled out by a registration officer or agent and the name of
19 the qualified elector so registering shall be subscribed by the
20 making of the qualified elector's mark.

21 D. When properly executed by the registration agent
22 or officer, or qualified elector, the original of the
23 certificate of registration shall be presented, either in
24 person or by mail by the qualified elector or by the
25 registration agent or officer, to the county clerk of the

1 county in which the qualified elector resides.

2 E. Only when the certificate of registration is
3 properly filled out, subscribed by the qualified elector and
4 accepted for filing by the county clerk as evidenced by the
5 county clerk's signature or stamp and the date of acceptance
6 thereon shall it constitute an official public record of the
7 registration of the qualified elector. It is unlawful for the
8 ~~[voter's]~~ qualified elector's date of birth or any portion of
9 the ~~[voter's]~~ qualified elector's social security number
10 required on the certificate of registration to be copied,
11 conveyed or used by anyone other than the person registering to
12 vote, either before or after it is filed with the county clerk,
13 except by elections administrators for purposes of the
14 registration and voting process.

15 F. A person who unlawfully copies, conveys or uses
16 information from a certificate of registration is guilty of a
17 fourth degree felony."

18 Section 3. Section 1-4-5.3 NMSA 1978 (being Laws 2005,
19 Chapter 270, Section 18) is amended to read:

20 "1-4-5.3. REGISTRATION--LACK OF PHYSICAL ADDRESS.--

21 A. If a qualified elector resides in an area
22 lacking a specific physical address, the qualified elector
23 shall be allowed to substitute a map or give a description and,
24 if available, a mailing address or the latitude and longitude
25 from a geographical information system, indicating where the

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1 qualified elector resides for a physical address [~~and register~~
2 ~~to vote~~]. The [~~voter~~] qualified elector shall be assigned to a
3 precinct based on the geographic description of where the
4 [~~voter~~] qualified elector resides.

5 B. As used in this section, "geographical
6 information system" means a system that stores and analyzes
7 geographic data that can be used to display and map addresses
8 and locations."

9 Section 4. Section 1-4-11 NMSA 1978 (being Laws 1969,
10 Chapter 240, Section 67, as amended) is amended to read:

11 "1-4-11. DUTIES OF COUNTY CLERK--UPON RECEIPT OF
12 CERTIFICATES.--

13 A. Upon receipt of a complete certificate of
14 registration, if in proper form, the county clerk shall
15 determine if the qualified elector applying for registration is
16 already registered in the registration records of the county.
17 If the qualified elector is not already registered in the
18 county and if the certificate of registration is received
19 within the time allowed by law for filing certificates of
20 registration in the county clerk's office, the county clerk
21 shall sign or stamp, in the space provided therefor on each
22 copy of the certificate, [~~his~~] the qualified elector's name and
23 the date the certificate was accepted for filing in the county
24 registration records. A voter identification card shall be
25 handed or mailed as soon as practical to the [~~voter~~] qualified

1 elector and to no other person.

2 B. If the qualified elector is already registered
3 in the county as shown by ~~[his]~~ the qualified elector's
4 original certificate of registration currently on file in the
5 county registration records, the county clerk shall not accept
6 the new certificate of registration unless it is filed pursuant
7 to Section 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. ~~[He]~~ If
8 the applicant's certificate of registration is rejected for any
9 reason, the county clerk shall stamp or write the word
10 "rejected" on the new certificate of registration and hand or
11 mail it, if possible, to the ~~[voter]~~ applicant with an
12 explanation why the new certificate of registration was
13 rejected and what remedial action, if any, the ~~[voter]~~
14 applicant must take to bring ~~[his]~~ the registration up to date
15 or into compliance with the Election Code.

16 C. If the qualified elector does not register in
17 person, indicates that ~~[he]~~ the qualified elector has not
18 previously voted in a general election in New Mexico and does
19 not provide the registration officer with the required
20 identification, the registration officer shall indicate this on
21 the ~~[voter's]~~ qualified elector's certificate of registration
22 and the county clerk shall note this on the appropriate
23 precinct signature roster.

24 D. If the qualified elector substitutes latitude
25 and longitude from a geographical information system for a

1 physical address pursuant to Section 1-4-5.3 NMSA 1978, the
2 county clerk shall use a mail service, if available, that has
3 geographical information system delivery capability to deliver
4 the voter identification card or certificate of registration."

5 Section 5. Section 1-4-49 NMSA 1978 (being Laws 2005,
6 Chapter 270, Section 17) is amended to read:

7 "1-4-49. THIRD-PARTY REGISTRATION AGENTS--REGISTRATION
8 REQUIRED--PROCEDURES--REPORTS--PENALTY.--

9 A. Registration agents who either register or
10 assist persons to register to vote on behalf of an organization
11 that is not a state or federal agency shall register with the
12 secretary of state, and the organization shall register and
13 provide the secretary of state with:

14 (1) the names and addresses of the officers of
15 the organization and the name and permanent address of the
16 organization;

17 (2) the names, permanent addresses, temporary
18 addresses, if any, dates of birth and social security numbers
19 of each person registering persons to vote in the state on
20 behalf of the organization; and

21 (3) a sworn statement from each registration
22 agent employed by or volunteering for the organization stating
23 that the agent will obey all state laws and rules regarding the
24 registration of voters on a form that gives notice of the
25 criminal penalties for false registration.

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1 B. Organizations employing registration agents or
2 using volunteer registration agents shall deliver or mail a
3 certificate of registration to the secretary of state or county
4 clerk within forty-eight hours of its completion by the person
5 registering to vote or deliver it the next business day if the
6 appropriate office is closed for that forty-eight-hour period.

7 C. The secretary of state may issue rules to ensure
8 the integrity of the registration process, including rules
9 requiring that organizations account for all registration forms
10 used by their registration agents.

11 D. A person who [~~willfully~~] violates the provisions
12 of this section is guilty of a petty misdemeanor and [~~shall~~
13 ~~have his~~] the person's third-party registration agent status
14 shall be revoked. If the person who violates a provision of
15 this section is an employee of an organization and has
16 decision-making authority involving the organization's voter
17 registration activities or is an officer of the organization,
18 that organization shall be subject to civil penalties as
19 described in Subsection E of this section.

20 E. If the secretary of state reasonably believes
21 that a person committed, or is about to commit, a violation of
22 the provisions of this section, the secretary of state shall
23 refer the matter to the attorney general or a district attorney
24 for enforcement. The attorney general or district attorney may
25 institute a civil action in district court for a violation of

1 the provisions of this section or to prevent a violation of the
2 provisions of this section. An action for relief may include a
3 permanent or temporary injunction, a restraining order or any
4 other appropriate order, including a civil penalty of two
5 hundred fifty dollars (\$250) for each violation, not to exceed
6 five thousand dollars (\$5,000)."

7 Section 6. Section 1-8-2 NMSA 1978 (being Laws 1969,
8 Chapter 240, Section 152, as amended) is amended to read:

9 "1-8-2. NOMINATION BY MINOR POLITICAL PARTY--
10 CONVENTION-DESIGNATED NOMINEES.--

11 A. If the rules [~~and regulations~~] of a minor
12 political party require nomination by political convention:

13 (1) the chairman and secretary of the state
14 political convention shall certify to the secretary of state
15 the names of their party's nominees for United States senator,
16 United States representative, all elective state offices,
17 legislative offices elected from multicounty districts, the
18 public regulation commission, all elective judicial officers in
19 the judicial department and all offices representing a district
20 composed of more than one county; and

21 (2) the chairman and secretary of the county
22 political convention shall certify to the county clerk the
23 names of their party's nominees for elected county offices and
24 for legislative offices elected from a district located wholly
25 within one county or that is composed of only one county.

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1 B. The names certified to the secretary of state
2 shall be filed on the [~~second Tuesday in July~~] day following
3 the primary election in the year of the general election and
4 shall be accompanied by a petition containing a list of
5 signatures and addresses of voters totaling not less than one
6 percent of the total number of votes cast at the last preceding
7 general election for the office of governor or president of the
8 United States, as the case may be:

9 (1) in the state for statewide offices; and

10 (2) in the district for offices other than
11 statewide offices.

12 The petition shall contain a statement that the voters
13 signing the petition are residents of the state, district,
14 county or area to be represented by the office for which the
15 person being nominated is a candidate.

16 C. The names certified to the county clerk shall be
17 filed on the [~~second Tuesday in July~~] day following the primary
18 election in the year of the general election and shall be
19 accompanied by a petition containing a list of signatures and
20 addresses of voters totaling not less than one percent of the
21 total number of votes cast at the last preceding general
22 election for the office of governor or president of the United
23 States, as the case may be:

24 (1) in the county for countywide offices; and

25 (2) in the district for offices other than

1 countywide offices.

2 The petition shall contain a statement that the voters
3 signing the petition are residents of the state, district,
4 county or area to be represented by the office for which the
5 person being nominated is a candidate.

6 D. Persons certified as nominees shall be members
7 of that party before the day the governor issues the primary
8 election proclamation.

9 E. No voter shall sign ~~[any]~~ a petition prescribed
10 by this section for more persons than the number of minor party
11 candidates necessary to fill the office at the next ensuing
12 general election."

13 Section 7. Section 1-14-15 NMSA 1978 (being Laws 1978,
14 Chapter 48, Section 1, as amended) is amended to read:

15 "1-14-15. RECOUNTS--RECHECKS--COST OF PROCEEDINGS.--

16 A. An applicant for a recount shall deposit with
17 the proper canvassing board or, in the case of an office for
18 which the state canvassing board issues a certificate of
19 nomination or election, with the secretary of state fifty
20 dollars (\$50.00) in cash, or a sufficient surety bond in an
21 amount equal to fifty dollars (\$50.00), for each precinct for
22 which a recount is demanded. An applicant for a recheck shall
23 deposit with the proper canvassing board or, in the case of an
24 office for which the state canvassing board issues a
25 certificate of nomination or election, with the secretary of

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1 state ten dollars (\$10.00) in cash, or a sufficient surety bond
2 in an amount equal to ten dollars (\$10.00), for each voting
3 machine to be rechecked.

4 B. The deposit or surety bond shall be security for
5 the payment of the costs and expenses of the recount or recheck
6 in case the results of the recount or recheck are not
7 sufficient to change the results of the election. [~~The state~~
8 ~~canvassing board may condition the issuance of the summons on a~~
9 ~~receipt of a portion of or the full estimated costs of the~~
10 ~~recount or recheck to ensure sufficient security.~~]

11 C. If it appears that error or fraud sufficient to
12 change the winner of the election has been committed, the costs
13 and expenses of the recount or recheck shall be paid by the
14 state upon warrant issued by the secretary of finance and
15 administration supported by a voucher of the secretary of
16 state, or shall be paid by the county upon warrant of the
17 county clerk from the general fund of the county, as the case
18 may be.

19 D. If no error or fraud appears to be sufficient to
20 change the winner, the costs and expenses for the recount or
21 recheck shall be paid by the applicant. Costs shall consist of
22 any docket fees, mileage of the sheriff in serving summons and
23 fees and mileage of precinct board members, at the same rates
24 allowed witnesses in civil actions. If error or fraud has been
25 committed by a precinct board, the board members shall not be

entitled to such mileage or fees."

Section 8. REPEAL.--Section 1-6-10.2 NMSA 1978 (being
Laws 2003, Chapter 378, Section 1) is repealed.

Section 9. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.

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